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ALTERATION IN USE OF LEASEHOLD PREMISES

Just over two years ago (1959) Vol. 23 at p. 1, we commented on the use clause in leases in the light of the Landlord and Tenant Act, 1954. The question of obtaining the landlord's permission to change of use seems to have become increasingly important recently. The value of land continues to rise and where a lessee has a lease for a substantial period of time, it is often of considerable capital value, even though the rent was fixed only a few years ago. Where he seeks to assign his lease, the lessor may well apply his mind to the question whether he, the lessor, can obtain some part of the capital appreciation. Under the Landlord and Tenant Act, 1927, s. 19 (3), it is provided that where the lease contains a covenant, condition or agreement against the alteration of the user of the demised premises, without licence or consent, such covenant, condition or agreement shall, if the alteration does not involve any structural alteration to the premises, be deemed, notwithstanding any provision to the contrary, to be subject to a proviso that no fine or sum of money in the nature of a fine (*e.g.*, by way of increase of rent) shall be payable for such licence or consent. The section goes on to provide that there is nothing to prevent a lessor requiring payment of a reasonable sum for damage to, or diminution of the value of, the demised premises or the lessor's neighbouring premises or of any legal or other expenses in connection with the licence or consent.

This section can be evaded by the draftsman quite easily. It does not apply where there is an absolute bar on a change of user: *Woolworth & Co.* v. *Lambert* [1937] Ch. 39 at p. 58. The lessee

should, therefore, strenuously resist any attempt to confine the lease to a particular trade unless there is provision for some alternative trade to be reasonably approved by the lessor. It is quite reasonable for a lessor with a parade of shops to restrict the trades so as to keep up the letting value of them all, but it is not very reasonable simply to limit the various trades without possible alternatives. If a lessee is starting in a new area, he can never know for certain that his particular trade will be successful and he might find himself saddled with a lease at a high rent which he cannot dispose of.

The other limitation of the section is that it only applies where no structural alteration is involved. If there is any structural alteration that is necessary the landlord can require a premium. Presumably the lessee might get round this by making an application under section 19 (2) if the alterations amount to improvements and then apply separately under section 19 (3).

Attention may be drawn to the fact that in the event of dispute the county court now has jurisdiction: Landlord and Tenant Act, 1954, s. 53 (1).

Housing Act, 1959, s. 165. Where the lessee wishes to convert a single house into a number of flats or maisonnettes and cannot get the lessor's consent he can apply to the Lands Tribunal under the Law of Property Act, 1925, s. 84. There has always been an alternative procedure under the Housing Acts enabling application to be made to the county court, and the jurisdiction of the county court since 1949 has been very wide. The present section provides that where any person interested in a house applies to the county court and planning permission has been granted for the use of the house as converted into two or more separate dwelling-houses instead of as a single dwelling-house the court may, after giving any person interested an opportunity of being heard, vary the terms of the lease so as to enable the house to be converted, subject to such conditions and upon such terms as the court may think just. Curiously enough, this jurisdiction seems to have been rarely exercised. Indeed, Mr. G. H. Newsom, Q.C.,[1] is of the opinion that a prospective applicant should never be advised to go to the county court if he can fit his case within the Lands Tribunal's jurisdiction for, he says, it is quite uncertain how the county court will regard these applications. There can be few, if any, county court judges who have seen any appreciable number of cases on the subject. Although it is true that there are few reported cases on the section,

[1] Preston & Newsom's *Restrictive Covenants*, 3rd ed., p. 266; Newsom's *Discharge and Modification of Restrictive Covenants*, p. 410.

Mr. Newsom would appear to be rather pessimistic, for in such reported cases as there are, the county court judges seem to have had sympathy with the applicants and it was held in *Stack* v. *The Church Commissioners* [1959] 1 All E.R. 1352 that once the discretion has been duly exercised the Court of Appeal will not readily interfere. Furthermore it seems quite clear that the county court has jurisdiction to authorise the conversion whether or not any structural alteration is involved, so that in an appropriate case the court can authorise the change of use and structural alteration at the same time.

The county court is becoming the most important court for landlord and tenant cases and it is suggested that if a lessor appears to be adopting an unreasonable attitude, the lessee is likely to find a satisfactory remedy in a county court without the fear of incurring an unduly heavy burden for costs.

Sales to Local Authorities

In Volume 22 at page 84 are set out the extra-statutory scale and notes agreed between the Council of the Law Society and the Local Authority Associations on sales of unregistered land to local authorities compulsorily or under threat of compulsion. The scale remains unchanged but a further agreement has been reached on its detailed application. The scale and notes are set out below. The notes are intended to apply as from the time of publication (March 1961) and not to be retrospective, except in cases where questions have been left in abeyance pending further discussions between the Society and the Associations.

Scale of Costs

Purchase Price					Special Scale
£		£			£ s. d.
Under 100					10 10 0
100					12 12 0
Over 100	not exceeding	150	... ...		12 12 0
,, 150	,, ,,	200	... ...		12 12 0
,, 200	,, ,,	250	... ...		12 12 0
,, 250	,, ,,	300	... ...		12 12 0
,, 300	,, ,,	350	... ...		12 12 0
,, 350	,, ,,	400	... ...		12 12 0
,, 400	,, ,,	450	... ...		12 12 0
,, 450	,, ,,	500	... ...		12 12 0
,, 500	,, ,,	550	... ...		12 12 0
,, 550	under	600	... ...		12 12 0
,, 600	not exceeding	700	... ...		14 0 0
,, 700	,, ,,	1,000	... ...		19 0 0
,, 1,000	,, ,,	1,500	... ...		26 0 0
,, 1,500	,, ,,	2,000	... ...		34 0 0
,, 2,000	,, ,,	2,500	... ...		41 0 0
,, 2,500	,, ,,	3,000	... ...		49 0 0

Purchase Price				Special Scale
£		£		£ s. d.
Over	3,000	not exceeding	3,500	54 0 0
,,	3,500	,, ,,	4,000	58 0 0
,,	4,000	,, ,,	5,000	64 0 0
,,	5,000	,, ,,	6,000	70 0 0
,,	6,000	,, ,,	10,000	75 0 0
,,	10,000	,, ,,	15,000	100 0 0
,,	15,000	,, ,,	20,000	125 0 0
,,	20,000	,, ,,	30,000	150 0 0
,,	30,000	,, ,,	40,000	180 0 0
,,	40,000	,, ,,	50,000	215 0 0
,,	50,000	,, ,,	60,000	250 0 0
,,	60,000	,, ,,	70,000	285 0 0
,,	70,000	,, ,,	80,000	320 0 0
,,	80,000	,, ,,	90,000	355 0 0
,,	90,000	,, ,,	100,000	390 0 0
,,	100,000	,, ,,	125,000	400 0 0
,,	125,000	,, ,,	150,000	450 0 0
,,	150,000	,, ,,	175,000	500 0 0
,,	175,000	,, ,,	200,000	550 0 0
,,	200,000	without ceiling—by negotiation but not less than		£550

Notes on the Scale

1. The scale is to apply to all sales of property with unregistered title, which are completed on or after January 1, 1958, provided that the sale is one to which are applicable the provisions of the Lands Clauses Consolidation Act or any other public or private Act, which provides that the vendor's solicitor's charges are payable wholly or in part by the purchaser.

2. The scale is limited to the local authority's liability for the vendor's solicitor's costs; it does not preclude the vendor's solicitor from making a Schedule II charge against his own client in respect of any work for which the local authority is not legally liable.

3. Under section 82 of the Lands Clauses Consolidation Act, 1845, coupled with rule 11 of the rules applicable to Schedule I, Part 1, to the Solicitors' Remuneration Order, 1883 (as amended), the purchasing authority's legal liability extends only to the vendor's solicitor's Schedule II charges for work from the preparation of the abstract of title onwards (see *Re Hampstead Junction Ry., ex p. Buck* (1883) 1 H. & M. 519); in the case of those local authorities who have in the past paid a small fee for the vendor's solicitor's preliminary work before the abstract, that work, unless otherwise agreed, is intended also to be covered by the scale.

4. In the absence of any special agreement to the contrary, the local authority will pay to the vendor's solicitor, in addition to the scale (except where (b) below applies):

(a) In respect of mortgagee's solicitor's costs on redemption or release—

(i) where it is necessary for the mortgagee to join in a conveyance (*e.g.*, because only part of the property is being purchased)—the sum of £4 4s.

(ii) in all other cases—the sum of £2 2s.

(b) Where the local authority is satisfied that in order to deduce title the vendor's solicitor is obliged to pay a fee to some other solicitor for an abstract of title—either two-thirds of the scale fee plus the costs of such abstract or the scale fee without any addition, whichever is the greater.

(c) Where the local authority requires some step to be taken to perfect title (*e.g.*, the appointment of new trustees or obtaining a grant of representation), which (i) time would render unnecessary and which would be unlikely to be taken but for the local authority's purchase, and (ii) will not be of benefit to the vendor in respect of his other property—the Schedule II costs and disbursements incurred in taking such step, including those of any third party.

(d) Where the local authority requires the vendor to obtain the consent of some third party to the sale or to ascertain that such consent is not necessary—the Schedule II costs and disbursements of the vendor's solicitor and of the third party.

(e) Fees paid by the vendor's solicitor to third parties for the production of documents (including documents in the possession of the vendor's mortgagee or trustee).

(f) Where the vendor's solicitor peruses a draft on behalf of several parties (other than mortgagees) having distinct interests, joining in the conveyance, and proper to be separately represented—the sum of £3 for each such party after the first.

(g) Where a party, other than the vendor's mortgagee, joins in a conveyance and is represented by a separate solicitor—the Schedule II charges of such separate solicitor.

(h) An amount to be arrived at by agreement between the vendor's solicitor and the local authority for the extra work involved in respect of any rentcharges or overriding rentcharges subject to which the property is sold.

5. In the absence of any special agreement to the contrary, the local authority will not make any payment in respect of:

(a) Costs incurred by the vendor in connection with a dispute as to title, *e.g.*, an adverse claim to the property.

(b) An abortive sale.

(c) Any statutory declaration, reasonably required to constitute the vendor's title.

(d) Additional costs incurred by one of joint vendors availing himself of his right of separate representation.

(e) Any disbursements in respect of travelling, letters, messengers, telephone, postages or other similar petty disbursements.

6. Where the local authority is acquiring more than one property from the same vendor at the same time:

(a) It will pay separate scale fees (based on the consideration apportioned to each property):

(i) if there are substantially separate titles, even if the properties are included in one conveyance, or

(ii) if there is one title, but the local authority requires more than one conveyance.

(b) If there is a common title and only one conveyance is taken, only one scale fee will be paid, even if the properties are not contiguous.

7. Where, in addition to the purchase price, a payment is made for injurious affection, severance or disturbance, or under Part II of the Second Schedule to the Housing Act, 1957, or any Act or statutory provision amending or replacing the same, the scale fee is to be calculated on the total of the purchase price and such payments, provided that such payments are made to the vendor by the local authority at the time of completion of the purchase of the property.

8. Where the property is dealt with by a Dedication Agreement the following payments (in addition to the negotiating fee, if applicable) will be made:

(a) Where title is deduced and there is a money payment—the scale fee.

(b) Where title is deduced and there is no money payment—the sum of £10 10s.

(c) Where no title is deduced and whether or not there is a money payment—the sum of £5 5s.

9. Where the title to the property is in part unregistered and in part registered, the local authority will pay the scale fee in respect of the consideration for the unregistered land and the scale fee under the Solicitors' Remuneration (Registered Land) Orders in respect of the consideration for the registered land calculated on the value of each part as apportioned for the purpose of assessing Land Registry fees.

10. The scale is not applicable to:

(a) transactions where the " expedited completion " procedure is used (*e.g.*, under s. 18 of the Town and Country Planning Act, 1944, or s. 39 of the Town and Country Planning Act, 1947), or

(b) exchanges of land.

In such cases the charges must still be made under Schedule II.

11. The foregoing is confined to sales of unregistered land to local authorities, except when registered land is specifically mentioned. No similar negotiations have taken place regarding sales to government departments or nationalised undertakings.

Negotiation of Compensation. When the vendor's solicitor negotiates the compensation for the acquisition of the property, *whether the title is registered or unregistered*, without the employment of a valuer, the acquiring authority will pay a negotiating fee on the total compensation (calculated in accordance with paragraph 7 of the notes above) equal to three-quarters of the scale when the total compensation does not exceed £5,000, or two-thirds of it in every other case.

IMPLIED OBLIGATIONS OF A LANDLORD AS TO THE CONDITION OF PREMISES AT THE TIME OF LETTING

By W. A. West, LL.M., Barrister-at-Law

The Leasehold Reform Committee, reporting in 1950,[1] recommended a code of covenants to be implied into lettings at a rack rent unless written agreement had been made on the matters specified. The suggested covenants varied according to the length of term and type of letting. No recommendations were made, however, on terms which should be implied as to the condition and fitness of the subject-matter *at the time of letting*. Naturally different considerations arise according to the purpose of a letting but it is submitted that the existing law on this matter is sufficiently haphazard to justify some attempt to arrange it into logical principles.

The general rule of law is that a lessor makes no implied promise that the property he lets is fit for the purpose for which it is let or indeed that it is fit for any purpose at all. This application of the rule caveat emptor operates with the fullest rigour as between landlord and tenant. Nevertheless, a number of exceptions to the general rule have appeared in the course of time and with a varying degree of certainty:

1. Statute has imposed a condition of fitness for habitation in lettings at low rents and for this purpose a standard of fitness has been specified. These provisions (sections 4 and 6 of the Housing Act, 1957) will be examined in a subsequent article.

2. In lettings of furnished dwellings there is at common law an implied condition that the premises are fit for human habitation at the time of letting. It is clear that the obligation is not confined to the state of the furniture; it has been held to apply to such matters as defective sewers.[2] Although the implied condition has been said to apply only to short lettings for immediate occupation,[3] it has been held to apply to a letting for as long as two years.[4] Most of the cases on furnished lettings seem to have been concerned with infection by disease and infestation by insects.[5] The standards of fitness for human habitation laid down in the Housing

1 Cmd. 7982.
2 *Wilson* v. *Finch Hatton* (1877) 2 Ex.D. 336.
3 *Chester* v. *Powell* (1885) 52 L.T. 722.
4 *Harrison* v. *Malet* (1886) 3 T.L.R. 58.
5 This became known as the "bug principle"—see *Chester* v. *Powell* (*supra*).

Act, 1957,[6] apply only for the purposes of that Act and have no application therefore to the covenant implied at common law in relation to furnished lettings.

3. It was held by the Court of Appeal in *Re Puckett and Smith's Contract* [7] that prior to completion by conveyance, a contract for sale of land may be rescinded if a latent defect exists rendering the land unsuitable for the known purpose for which the purchaser has bought it. In this case the defect was a culvert under the land and although the vendor did not know about the culvert, he described the land as suitable for building development. The reasoning given in this case (which was an application of the rule in *Flight* v. *Booth* [8]) would, I submit, apply equally to an agreement for a lease as to a sale of freeholds. However the right of rescission no longer exists if the conveyance has been completed and similarly if the proposition were extended to agreements for leases, the right of rescission would have to be lost when the lease itself is executed.

This would be a workable rule in the case of building leases; in these there is a reasonable period between contract and completion, in which the purchaser can have the land properly surveyed; but it would provide no relief in the case of occupation and other rack rent leases, where there is rarely a contract prior to the lease. In such case, the purchaser's remedy is of course not to proceed with the lease; if he executes the lease he has no remedy. His difficulty is that he has no real opportunity for an adequate survey before executing the lease. It would of course be rare to find a defect of so fundamental a nature as in the case of sales of land and building leases of land; but the problem could arise, for example, in the case of a flat where the building foundations were found to be not capable of sustaining the flats. It will be submitted that it is open to the courts to imply a condition of support in such cases.

4. In the absence of express agreement, there is a condition implied in sales of houses *to be completed* that when completed the premises will be fit for human habitation. To this Romer L.J. added that this does not apply " where the structure stands at the time of the sale," [9] but there appears to be no other authority for this.

All the cases on this proposition [10] are concerned with sales by builders; and the reasons given for implying this contractual term

6 s. 4.
7 [1902] 2 Ch. 258.
8 (1834) 1 Bing.H.C. 370.
9 *Perry* v. *Sharon Dev. Co.* [1937] 4 All E.R. 390 at p. 394.
10 *Perry* v. *Sharon Dev. Co., supra*; *Hoskins* v. *Woodham* [1938] 1 All E.R. 692; *Lynch* v. *Thorne* [1956] All E.R. 744; *Jennings* v. *Tavener* [1955] 2 All E.R. 769; *Miller* v. *Cannon Hill Estates, Ltd.* [1931] 2 K.B. 113; *Otto & Otto* v. *Bolton & Norris* [1936] 2 K.B. 46.

are two [11]—that the contract is partly for work and labour and that the purchaser has no opportunity for inspection. The former reason would presumably not apply if the sale were by someone other than the builder as the work would be done by an independent contractor but it is submitted that the principle would continue to operate by virtue of the second reason. It is further submitted that the same rule would apply to *lettings* of properties to be completed but so far there is no express decision or dictum on lettings. The sale and letting of *flats* prior to completion is becoming a common transaction, especially in London, and it is to be supposed that the question will come up for decision at some point of time. It will be submitted that such a term should be implied wherever a survey is not contemplated or is impossible.

The General Rule

Apart from these four exceptions, the common law imposes no implied condition or stipulation in contracts for letting land or buildings that the premises are fit (physically or legally) for the purpose for which they are let.[12] This proposition seems to be so firmly entrenched in our land law, that it is with some surprise that one finds how recently and uncertainly it arrived. The rule as to the hiring of chattels is different and, so far as comparable, civil law was different. Scottish law implies in leases of urban houses that the landlord gives to the tenant a habitable house. This obligation is based upon custom.[13] It is restricted to urban lettings.

Could such an obligation have been imported by the courts into lettings of houses in England? Is it still open to the courts to impose such an obligation on landlords? It is proposed to examine the authorities to seek an answer to these questions. The conclusions are set out at the end of this article.

An Examination of the Authorities

As the purpose of this inquiry is to find out how this rule came to be established, and to examine its extent, the cases found on an action against the landlord in *tort* are not directly relevant as we

[11] *Per* MacKinnon L.J. in *Perry* v. *Sharon Dev. Co.* (*supra*) at p. 395.

[12] *Hart* v. *Windsor* (1843) 12 M. & W. 68; *Cruse* v. *Mount* [1933] Ch. 278; *Edler* v. *Auerbach* [1950] 1 K.B. 359; [1949] 2 All E.R. 692, *post.*

[13] Counsel in *Hart* v. *Windsor* (1843) 12 M. & W. 68 referred to two cases in Brooke's Abr. " Dette " folio 220 pl. 18 & 72, in which tenants had pleaded that by the custom of London, the landlord was bound to repair and uphold the house sufficiently for habitation. I can trace no other mention of this custom; nor any case in which it has been relied upon. Such a custom must have lapsed by now.

are here concerned with implied contractual obligations; nor are we concerned here with the landlord's liability during the term. We have therefore to hack away a formidable array of the tort cases often cited in support of the proposition, as the dicta in them dealing with implied obligations between landlord and tenant are strictly speaking *obiter*. The following may be mentioned: *Cavalier* v. *Pope*,[14] *Bottomley* v. *Bannister*,[15] *Otto* v. *Bolton* [16] and *Davis* v. *Foots*.[17]

Even the famous dictum of Erle C.J. in *Robbins* v. *Jones* [18]: " There is no law against letting a tumbledown house " must be discarded under this test as it requires (and gets) the modification " contract apart " [19] to follow it; and the question we are considering is whether there is such a contract. Indeed, Erle C.J. went on to say that any " remedy is on the contract alone " and consequently the plaintiff had no right of action as he was a third party. (In any event, the jury had found that the injury sustained by him occurred on and was due to a defect on the adjoining highway and not on the demised premises.)

In those cases where the action is by a third party against the landlord, the plaintiff could not succeed on the basis of even an express warranty by the landlord as to the condition of the premises, as this would be *res inter alios acta*. The existence or not of such a covenant was not relevant to the actual issue.

The cases between landlord and tenant have not always distinguished between a landlord's implied obligation as to fitness of premises at the time of letting and his obligations during the term. Nevertheless an attempt will be made to select the cases which appear to deal primarily with the former question.

The earliest reported cases on implied contractual obligations as to fitness are *Salisbury* v. *Marshall*,[20] *Edwards* v. *Etherington* [21] and *Collins* v. *Barrow* [22]; the latter two cases deal with conditions arising after the beginning of tenancy but it is convenient to deal with them here because all three cases are grouped together when

14 [1906] A.C. 428 (action by *wife* of tenant).
15 [1932] 1 K.B. 458 (action had to be framed in *tort* as it was taken under the Fatal Accidents Act. In any event this case was one of the *sale* of a house and indeed there was an *express* warranty).
16 [1936] 2 K.B. 46 (again, this was a *sale* case; the action was by the purchaser and also by the purchaser's mother—the tort claim failed. The former succeeded on the basis of breach of warranty).
17 [1939] 4 All E.R. 4; [1940] 1 K.B. 116 (this is the only landlord and tenant case and it is examined below).
18 (1863) 15 C.B.(N.S.) 221 at p. 240.
19 Salmond wrongly imports the word " express " before " contract " in setting out the rule laid down in *Robbins* v. *Jones* (12th ed., p. 529).
20 (1829) 4 Car.E.P. 65.
21 (1825) Ry. & M. 268.
22 (1831) 1 M. & Rob. 112.

referred to in subsequent decisions. They are all concerned with unfurnished lettings. And in them the courts were inclined to hold that an implied warranty existed.

None of these cases can be regarded as authoritative today but they remain significant in that they show that not only was the law on this matter undecided at that time but that the judges were quite ready to hold the exact opposite of what has come to be accepted as the law today.

Twelve years after the latest of this group of cases, there appear another trio of cases which set the whole future course of the law on the matter. The first is *Smith* v. *Marrable*.[23] This was a letting of a furnished house infested with bugs and it is indeed the *locus classicus* for furnished lettings. Nevertheless, it is to be noted that furniture was nowhere mentioned in the letting agreement between the plaintiff and defendant and furthermore only Lord Abinger C.B. confined his judgment to furnished lettings—the ratio now ascribed to the case is mainly based upon subsequent construction. Baron Parke in a later case [24] confessed that he no longer agreed with the reasons he had given in his judgment, where he flatly said that " a person who lets a house must be taken to let it under the implied condition that it is in a state fit for decent and comfortable habitation," and he relied on *Edwards* v. *Etherington* and *Collins* v. *Barrow* to support his decision, going on to say " if the demised premises are incumbered with a nuisance of so serious a nature that no person can reasonably be expected to live in them, the tenant is at liberty to throw them up." Alderson B. and Gurney B. concurred.

The next case is *Sutton* v. *Temple*.[25] This was not a letting of a house for habitation; it was the letting of the eatage of a field; the court held in effect that there was no implied covenant that the field had not been spread with poison.

Lord Abinger C.B. considered *Smith* v. *Marrable* and supported it on the grounds that the furniture was the greater part of the value of a furnished letting. He thought however that other considerations might apply if the tenant had inspected a furnished house before taking it. He argued that if a person contracts for the use and occupation of land for a specified time, he is bound by the bargain, even though he took it for a particular purpose and that purpose be not attained. " Suppose that the tenant took the land with the object of making a handsome income out of it as a farm and the object failed, he would obviously be liable for rent.

[23] (1843) 11 M. & W. 5.
[24] *Hart* v. *Windsor* (1843) 12 M. & W. 68.
[25] (1843) 12 M. & W. 53.

Suppose again the grass was wet and injurious at certain seasons of the year, would he not be liable for those periods? Suppose the defendant had not put any cattle on the land he would have been liable for rent although in one sense he had no beneficial occupation."

It will be seen that his examples all deal with conditions arising after the time of demise whereas in the case he was considering the failure was due to an existing defect in the thing bargained for—a defect (the scattering of poisonous paint) which (although there was no evidence that the plaintiff knew about it) was entirely under the control of the other contracting party—a defect which existed at the time of letting and one which rendered the stipulated use of the subject-matter impossible. There was something like an initial failure of consideration.

The question of derogation from grant was also argued in this case but it was held that this doctrine would apply only to matters of title or eviction of the tenant. Derogation from grant and breach of the covenant for quiet enjoyment appear to overlap considerably but it would seem that both refer only to acts done after the commencement of the letting whereas we are here considering the condition at the time of letting.

Parke B. in his judgment had to swallow the words he had used in *Smith* v. *Marrable* but he ruled against the defendant without hesitation.

Gurney B. was a little more doubtful, but with some hesitation he distinguished *Smith* v. *Marrable* on the grounds that goods and chattels were included in the letting in that case.

Rolfe B. also did not find it easy to distinguish *Smith* v. *Marrable* but said he was prepared to overrule it if it could not be distinguished.

A distinction between urban and rural lettings was not considered by any members of the court. The case was dealt with solely on the basis of whether the tenant could in the circumstances refuse to pay rent. It has of course long been clear law that rent issues from the land (see *Paradine* v. *Jane* [26]). It is therefore not dependent on the continued existence of a demised building.

Hart v. *Windsor*,[27] decided in the same year, was another action for rent—here as in *Smith* v. *Marrable* the house was infested with bugs (or as the pleadings had it "noxious, stinking and nasty insects"), but the letting in this case was an unfurnished house and garden. Here was an express covenant by the tenant "to preserve the messuage and premises in good and tenantable repair."

[26] (1647) Aleyn 26.
[27] (1843) 12 M. & W. 68.

Parke B. delivered the judgment. He overruled *Edwards* v. *Etherington*, *Collins* v. *Barrow* and *Salisbury* v. *Marshall* (casting doubt on the correctness of their reports although he had decided *Smith* v. *Marrable* on the strength of them). The arguments turned mainly upon the extent of the landlord's covenant for quiet enjoyment. *Smith* v. *Marrable* was whittled down a little further—it was "the case of a demise of a ready-furnished house for a temporary residence at a watering place. It was not a lease of real estate merely. But that case certainly cannot be supported on the ground on which I rested my judgment."

Again, no distinction was drawn between lettings of urban houses for habitation and other lettings.

These cases are the pillars of this section of the law but it is clear from a critical examination of them that the law based upon them could have as easily developed in the opposite direction—at any rate so far as unfurnished urban lettings are concerned. *Smith* v. *Marrable*, until its subsequent paring down, could have been an authority for an implied covenant of fitness in unfurnished as well as furnished lettings. *Hart* v. *Windsor* is the only one of these three directly supporting the proposition now established that there is no warranty of fitness in lettings of unfurnished dwellings but the ratio of even this case can be restricted to a much smaller ambit as there was a tenant's repairing covenant; the effect of this may have been held to relieve the landlord of any implied covenant on his part. As in the other cases, the action was a landlord's action for rent. There was no counter-claim for damages for breach of any implied warranty that the premises were fit for occupation. This point was, therefore, only indirectly in issue. Nevertheless, it is clear that the court was against the existence of such a warranty. These cases can however be taken as clear authority for the proposition that a tenant has no right *to withhold rent* in respect of any implied obligation as to the condition of the premises.

The next landmark is *Keats* v. *Earl of Cadogan*.[28] This was an action for deceit. A house was let in a ruinous condition; there was no express representation as to its state and it was held that there was no implied duty upon the owner to *inform* a proposed tenant that it was unfit for human habitation.[29]

In 1880 the principle is extended from dwelling-houses to trade premises.[30] Here the plaintiff let certain floors in a warehouse to the defendant. The defendant covenanted to repair the inside,

[28] (1851) 10 C.B. 591.

[29] *Quaere* if the defect is a concealed one and the lessor knows of it (see Glanville Williams in M.L.R., Vol. V, 3 and 4).

[30] *Manchester Bonded Warehouse Co.* v. *Carr* (1880) 5 C.P.D. 507; 49 L.J. (Q.B.) 809.

damage by fire, storm and fair wear and tear excepted. The plaintiff covenanted to keep the walls, roof and main timbers in repair. Sublessees of the defendant overloaded the floor with flour and the whole building fell down. The plaintiff rebuilt it and sued for rent and damages; the defendant counterclaimed damages. It was held: (1) the defendant was liable for rent; (2) there was no implied warranty that the building was fit for the purpose for which it was to be used; (3) in the absence of notice of want of repair, the plaintiffs were not liable on their covenant to repair the walls, etc.; (4) the tenant was not liable for waste—destruction of a building if caused by using the property in a reasonable and proper manner was not waste; (5) as the case was not within his exceptions the tenant had to pay the cost of putting the insides of floors and fixtures in repair. We are here concerned with the second point. The court consisted of Lord Coleridge C.J., Grove and Lindley JJ., the judgment being read by Lord Coleridge. Unfortunately, the judgment is almost perfunctory on this point, merely stating that no authority could be found for the proposition that " there is an implied warranty that a building was fit for the purpose for which it was to be used." [31]

We have to wait until 1933 for the next case on this point, when *Cruse* v. *Mount* [32] came before the Chancery Division, in which a flat had been let in a converted house. The conversion had been carried out so inefficiently that shortly after the plaintiff moved in the whole structure was in imminent danger of collapse. An intending tenant is obviously unable to have the whole building surveyed as other flats are in possession of other tenants; nor of course would he have any power to rebuild or reconstruct the premises. Nevertheless Mr. Justice Maugham felt himself bound by the *Manchester Bonded Warehouse* case to hold that there was no implied warranty by the landlord that the flat was not part of a dangerous structure. It is submitted, however, that it would have been open to him to have decided that in the case of the letting of a *flat* for habitation there was an implied warranty that the structure would sustain the flat and one would have thought that it would have been not unreasonable to have so held.[33] However, in

31 Authority was quoted against it in this case (*Hart* v. *Windsor* and *Sutton* v. *Temple*) but, as a matter of general law, should a proposition be dismissed merely because no authority can be found for it? If no authority can be found against it either, the courts are free to decide on first principles. As Lord Macnaghten said (according to Scrutton L.J. in *Kimber* v. *Gas Light & Coke Co.* [1918] 1 K.B. 439): " The plainer a proposition is, the harder it often is to find judicial authority for it."

32 [1933] Ch. 278.

33 " When a man grants a house, he grants that which is necessary for the existence of the house "—*Birmingham, Dudley & District Banking Co.* v. *Ross* (1) (1888) 38 Ch.D. 295, *per* Cotton L.J. (although the doctrine in this case refers to positive interference with what he has granted).

the case, justice was eventually done as he was able to find for the plaintiff on the grounds that the landlord was in breach of his covenant for quiet enjoyment by asking the tenant to allow workmen to enter to do repairs. It is probable that the doctrine of non-derogation would protect a tenant only from positive acts by the landlord and the same would probably apply to any easement of support. *Booth* v. *Thomas* [34] was not cited in *Cruse* v. *Mount*. Admittedly the ratio in *Booth* v. *Thomas* is not easy to extract but all the members of the Court of Appeal took the view that the omission by the landlord (to repair a culvert on his adjoining land) amounted to a breach of the covenant for quiet enjoyment when the demised premises were flooded as a consequence. There was no express obligation to repair the culvert. Maugham J. could possibly have followed this decision in *Cruse* v. *Mount* if the tenant had waited for the building to collapse. But in *Penn* v. *Gatenex* [35] Lord Evershed M.R. considered that the omission must be such that it amounts or would amount to a wrongful act in itself and quoted *Booth* v. *Thomas* in support of this. In any event there would presumably be no breach of the covenant for quiet enjoyment if the collapse were only *impending*.

The next case, *Davis* v. *Foots*,[36] was a lamentable case in which a newly married couple were poisoned by gas fumes. The wife recovered but the husband died. A pipe had been left open by the landlord's son when he removed a gas fire before the plaintiff and her husband moved in. MacKinnon L.J. in delivering his judgment said that one most extraordinary feature of this case was that the smell of gas was not noticed earlier as it had been escaping ever since the morning. Another extraordinary feature of the case is that none of the authorities mentioned above was cited, MacKinnon L.J. relying entirely on one case. He said: " the law was stated by Scrutton L.J. in *Bottomley* v. *Bannister* [37] in a single sentence which is all that I need cite: ' Now it is at present well-established English law that, in the absence of express contract, a landlord of an unfurnished house is not liable to the tenant . . . for defects in the house . . . rendering it dangerous or unfit for occupation, even if he has constructed the defects himself, or is aware of their existence.' "

Now whether this statement of the law by Scrutton L.J. is right or wrong, it was not enough in itself to bind MacKinnon L.J. in *Davis* v. *Foots* as it was entirely unnecessary for the decision in *Bottomley* v. *Bannister*. *Bottomley* v. *Bannister* was the case of a

[34] [1926] Ch. 397.
[35] [1958] 1 All E.R. 712.
[36] [1940] 1 K.B. 116; [1939] 4 All E.R. 4.
[37] [1932] 1 K.B. at p. 468.

sale of a house in which the purchaser had entered prior to completion as tenant at will. The action was brought under the Fatal Accidents Act, 1846, and was in consequence pleaded as an action in *tort*. Most important of all, there was an express covenant by the defendant that the house would be fit for habitation [38] and indeed, Scrutton L.J. found as a fact that the house was in this respect fit for habitation when the deceased entered. (The boiler, which had caused the death of the parents of the plaintiffs, had apparently been tampered with by the deceased after entry.)

Whatever Scrutton L.J. said about implied obligations between landlord and tenant was therefore irrelevant to the case.

Edler v. *Auerbach*,[39] decided in 1949, was concerned with the legality of user of the premises for the purpose for which they had been let. This is a case at first instance and Devlin J. in a reserved judgment briefly dealt with this point and held himself bound by *Hart* v. *Windsor* (*supra*) to hold that a landlord gives no implied warranty that premises he lets for a specific purpose may legally be used for that purpose (the purpose here was professional use in contravention of Defence Regulations 68 CA which forbade the conversion of residential premises to other use without consent of the local authority).

Conclusions

In this review of the authorities for the proposition that a landlord letting unfurnished premises gives no implied warranty that the premises are fit for the purpose for which they have been let, it has been necessary to clear away the tort cases and the cases on the landlord's obligations *during* the term. In the result it will be seen that the authorities are not nearly as strong as is sometimes supposed.[40] If one confines oneself to cases of lettings *for habitation* there is *Davis* v. *Foots* and then one has to go back over a hundred years for an authoritative decision of Appeal status, and even that is far from clear. The only case in which the subject-matter is a *flat* is *Cruse* v. *Mount*, a first instance case in which the question was one of support.

A condition of fitness for habitation has long been implied into furnished lettings. It is well-established law that a term can only

38 Greer L.J. and Romer L.J. took the point that there was no breach of this covenant as there was still time to comply with it, the date for completing the house not having arrived at the time of the accident.

39 [1950] 1 K.B. 359; [1949] 2 All E.R. 692.

40 Glanville Williams argues cogently that it is still open to any court to hold that a landlord letting a house impliedly warrants that there is no concealed defect known to him making the premises unfit for the known purpose for which it is let. (See M.L.R., Vol. V, Nos. 3 & 4, p. 194.)

be implied if it is necessary in the business sense to give efficacy to the contract.[41] What then is the justification for imposing the covenant of fitness for habitation in the case of furnished lettings? The fact that there is furniture as well as a structure seems to have no magic; as has been seen, the implied covenant has been applied to the premises as well as to furniture (in *Wilson* v. *Finch Hatton*,[42] it was the drains). It cannot be explained therefore on the basis of a chattel hiring. The only intelligible explanation must surely be that furnished lettings are normally made for immediate occupation and therefore there is rarely any opportunity for an adequate survey. If this is so, why should it not apply equally to unfurnished lettings where in the circumstances a proper survey is not contemplated or as in *Cruse* v. *Mount* (*supra*) is not possible.

If the courts recognised the logical basis for this obligation which the common law has imposed on landlords in relation to furnished lettings it would require only a small further extension to apply it to any unfurnished lettings in which an inspection is not possible or in the contemplation of the parties.[43]

It is therefore submitted that it is still open to a court of first instance to hold that on a letting of a *flat* for habitation[44] the landlord impliedly covenants that the flat is fit for human habitation and that the structure is in a condition to sustain the flat.[45]

Only the House of Lords could now hold that there is any similar obligation implied in other lettings (apart from furnished lettings and lettings coming under section 6 of the Housing Act, 1957) whether they are urban or rural and whether they are lettings

[41] *The Moorcock* (1889) 14 P.D. 64; *Reigate* v. *Union Manufacturing Co.* (*Ramsbottom*) [1918] 1 K.B. 592.

[42] (1877) 2 Ex.D. 336.

[43] Or, to borrow the famous phrase from tort, "with no reasonable possibility of intermediate examination." Would the cases on third party injuries on the premises have been decided differently if *Donoghue* v. *Stevenson* had come first?

[44] Megarry (in (1958) 10 L.Q.R. 460) takes the view that the caveat emptor rule has little to recommend it in the case of flats.

[45] J. C. Hall (*Cambridge Law Journal*, April, 1960) considers that there would be ample justification for extending the doctrine relating to furnished lettings to certain other situations (including the circumstances of *Sleafer* v. *Lambeth B.C.* [1959] 3 All E.R. 378, where a tenant was injured by a defective door, there being no express repairing covenant but merely a practice for the landlords to carry out repairs). The implied obligation in furnished lettings is limited to the state of the premises *when demised* and he is wrong in thinking that the application of this doctrine to unfurnished premises would have helped Sleafer (as the defect in that case arose *during the term*). My submission is limited to the state of the premises *at the time of letting*.

for habitation or for any other purpose. To do this in relation to premises let for *habitation* would necessitate overruling only *Hart* v. *Windsor*, decided in 1843 [46]; and *Davis* v. *Foots* (which in my submission is based upon an *obiter dictum* of doubtful authority) decided in 1932.

[46] And in fact over forty years later in *Bunn* v. *Harrison* (1886) 3 T.L.R. 146 (C.A.) the Court of Appeal considered that the point was still open if the house is let for immediate occupation.

RATING VALUATION

By W. A. Leach, f.r.i.c.s.

ARTICLE 2

V. Methods of Valuation

Methods

35. As noted in para. 19, where a hereditament is let at a rent which is plainly a rack rent, that is conclusive of its value, but before that position can be accepted the rent must be examined to see whether it is truly a rack rent. The only way to do that is to determine what is the rack rental value of the hereditament. This is primarily the task of the valuation officer and, however experienced he is, it will not be sufficient for him just to put down his opinion of the rack rental value. If his views are challenged he must be prepared to support them by showing that his estimate in a particular case is justified by the rents at which other hereditaments have been let and be sure that other assessments are so consistent that they cannot be quoted against him. He will, therefore, analyse all the information available to him to ensure that, as far as possible, the assessments he makes are correct and uniform. That, of course, will still leave room for differences of opinion, and the valuer for the ratepayer, having concluded from his own experience that the assessment is too high, will in the main be attacking the opinions which have guided the valuation officer in his use of the evidence available to him and looking for other evidence to support his own views. If the ratepayer or his valuer and the valuation officer cannot agree, both must be prepared to submit their opinions and evidence to the local valuation court or Lands Tribunal in such a way that the court can see the differences between them and arrive at its own conclusions on the evidence. It would be useless to the court for one witness to say that in his experience the rack rental value was £x and for another to say that in his experience it was £y. The rack rental value of a property for purposes of rating is what it can be shown to be worth.

36. Surveyors have a number of methods of arriving at the rack rental value of different classes of property, but the one for general use is the comparative method. This will be explained in detail, but first the other methods occasionally used, *viz.*, the contractor's

test, the output basis and the profits basis, may be briefly dealt with.

Contractor's test

37. This is a method which is generally only applied to hereditaments of a type not normally in the market for letting and not comparable by nature or position with hereditaments which are normally let. It is a " last resort " method of valuation and the answer obtained thereby must always be considered in the light of all other circumstances. To apply the method it is first necessary to estimate the cost of erection of the buildings involved and the capital value of the land,[1] a fair rate of interest being applied to the capital values so obtained to give the gross or net annual value of the hereditament. In considering the cost of the buildings allowance must be made for their condition where they are old or unattractive to a tenant (but not for defects due to want of ordinary repairs [2]), also for obsolete or unsuitable planning and for ornament which would be considered superfluous by current standards unless having a publicity or prestige value. The answer is known as the " effective capital value " of the buildings.[3]

38. Even when the effective capital value of the buildings and the value of the site have been agreed, disputes frequently arise as to the percentage to be applied to the capital values. A higher rate of interest is commonly applied to the capital value of the buildings

1 Actual cost, if recent, may be a guide, but where the actual cost of building is relied upon unforeseen difficulties as regards foundations etc. should be priced and deducted. In considering the estimated present cost, it may be that the occupier would not be prepared to build to the same scale at current costs. The cost of acquisition and reconstruction is no guide: *Chandler* v. *E. Suffolk County Council* (1958) 51 R. & I.T. 411, L.T. See also article (1960) 53 R. & I.T. 35 and 51. As to the distinction between a " substituted building " and a " replacement building," see *Dawkins* v. *Leamington Spa Corpn. and Warwickshire C. C.* [1961] R.V.R. 291.

2 See para. 18, *ante* (Article 1). Where there is no gross value and the net annual value is arrived at direct, the tenant is deemed to be responsible for repairs and it would be his duty under such an obligation to put the premises into repair if not already in a satisfactory condition. Accordingly if the hereditament is let at a low rent in a bad state of repair, the value of the hypothetical tenant's obligation to put the hereditament into repair must be brought into account as consideration in addition to rent; alternatively, the hypothetical tenant taking the empty premises with a liability for repairs would require the landlord to put the premises into repair at the commencement of the tenancy and the hypothetical rent must be related to the hereditament put into repair.

3 Every adjustment is a matter of opinion and if too many have to be made the final answer may be so remote from the initial estimate of cost that the Tribunal may, as they have done in some cases, refuse to admit any value in the exercise. The method also suffers from the disadvantage that through restricted size or bad planning the buildings do not utilise the site value to the full. The higher the proportion of site value to total value the more important it will be to consider this.

than to that of the land. This is in conformity with market practice, for there is a difference in security as between the investment in land and the super-investment in the buildings. Where the hereditament is of a type for which a gross value has to be determined the percentage on the capital value of the buildings must allow for repairs, insurance and other expenses as noted in para. 11. It must not be overlooked, however, that the question is the rent which the hypothetical tenant would be willing to pay and the proper approach would seem to be to consider what rate of interest he would be prepared to pay for the use of the capital assets. If the only possible tenant is a local authority, they might prefer to buy rather than pay a rent based on a higher rate of interest than that at which they could borrow the purchase money. If there is only one possible tenant, what he could afford to pay would be most material. In the case of a commercial undertaking a commercial rate of interest would usually seem to be appropriate.

Output basis

39. This is the method of valuation applied to hereditaments used for mineral working, the value being based on the annual rate of extraction.

Profits basis

40. This method of valuation (sometimes called the accounts basis) has been applied to water undertakings, greyhound racetracks, wireless relay stations, caravan sites, etc., and is sometimes applied to licensed premises instead of the more usual method based on the annual barrelage sold; it has also been applied to hotels. It should not be used where rental evidence is available, for it is the hereditament and not the profits earned thereon which is rateable,[4] but where rental evidence is not available, the profits which can be earned by the occupation of the hereditament may be some guide as to the rent which an occupier would be willing to pay for it.

Comparative method

41. The normal method of valuation used in rating work is the comparative method, in which the rents and assessments of hereditaments which are comparable with the hereditament under

[4] *Cartwright* v. *Sculcoates Union* [1900] A.C. 150. Where the profits method is applied actual accounts may be accepted unless cogent reasons can be advanced against them, *e.g.*, special circumstances, mismanagement or expenses out of line with those incurred in comparable premises. Accounts are often produced in connection with caravan sites. A shop tenant was allowed to produce accounts as an indication of the relative trading value of two shops he occupied in a locality, but not as evidence of value.

consideration are examined side by side, allowances made for differences between the various hereditaments, and an assessment deduced from this examination. The application of the method requires the adoption of a common yardstick against which the values of comparable hereditaments can be tested. Normally this is the area of the hereditaments measured in a standard way, although for special premises there are other yardsticks, *e.g.*, for licensed premises the annual barrelage sold, for cinemas the seating capacity, for schools the number of pupils accommodated, for cotton spinning mills the number of spindles etc.

Methods of measurement of area

42. There are a number of methods of measurement of area, *e.g.*, effective floor area or carpet area, reduced area, gross floor area, gross internal area and reduced covered area. The important thing is to keep to some method throughout an exercise.[5]

Effective area, reduced area and zoning

43. The reduced area is based on what is known as the effective floor area or carpet area, *i.e.*, the floor space which can be used effectively as opposed to passages, lavatories and the like. This is measured in square feet (in some parts of the country in square yards), but the expression " feet super " (written f.s.) is commonly used instead of " square feet." The area is measured above skirting board level; built-in cupboards are included, but some valuers do not deduct chimney breasts.[6]

44. The effective floor area having been ascertained, it may be necessary to obtain the reduced area. This is particularly so in the case of shops where the principle of " zoning " is applied, the theory of zoning being that the shop window is the advertising station of the business of the occupier, the space immediately behind the front being available for further advertising (as by display in an arcade front), for quick service trade, or, having got the customer past the door, space in which he can look around and be attracted to make further progress. This front zone, usually called Zone A, is commonly taken to a depth of 20 or 25 feet.[7]

5 *Meredith* v. *Avery* (1958) 51 R. & I.T. 779 L.T. No method has been given express preference by the Tribunal.

6 This is unobjectionable where all the hereditaments compared have open fire places, but an open fire causes more loss of usable floor space than a central heating radiator and not to deduct chimney breasts exaggerates this discrepancy, especially where the rental value per f.s. is high.

7 Theoretically the depth of the front zone should be the depth of the shallowest shop for which there is reliable rental evidence since. If that happens to be 40 feet and there are no shallower shops there is no need to speculate as to the value of the front 20 feet; but if there are shallower shops the valuer must

The next zone lacks the special values of the front zone, but if the general demand is for a shop more than 20 or 25 feet deep, Zone B, although less valuable than Zone A, will have a high value for use in conjunction therewith. Beyond a certain depth, depending on the position, the number of tenants who can use more depth falls and so further zones become of less value.[8] Also, once the demand for serving space is satisfied, the residue of area is valuable only for storage, offices, staff rooms, lavatories and other ancillary accommodation which need not necessarily be on the ground floor.

45. So, in a particular case the valuer may take the area of Zone A to a depth of 20 feet from the frontage line, the area of Zone B to a further depth of 20 feet, and then possibly a third zone of 20 feet depth or possibly all the space behind Zone B lumped together and measured as a whole. The effective floor area of the basement and upper floors will next be measured and the reduced area can then be calculated, *i.e.*, the area equated to the value of Zone A. Thus if the value of Zone A is 1, the value of Zone B may be $\frac{1}{2}$ and the value of the area beyond Zone B $\frac{1}{4}$,[9] while the relative value of the basement may be $\frac{1}{8}$, the first floor $\frac{1}{3}$, and the second floor $\frac{1}{4}$. The reduced area of the hereditament will be:

Ground floor,	Zone A area	$\times 1 = a$
	Zone B area	$\times \frac{1}{2} = b$
	remainder, area	$\times \frac{1}{4} = c$
Basement,	area	$\times \frac{1}{8} = d$
First floor,	area	$\times \frac{1}{3} = e$
Second floor,	area	$\times \frac{1}{4} = f$

The total of a to f is the reduced area as if the whole hereditament had the same value per foot super as Zone A.

46. The reduced area is used in this way.[10] First the reduced area is calculated of a number of comparable hereditaments for

speculate as to how the rental evidence for 40 feet should be broken down. As observed a Zone A of 20 or 25 feet depth is commonly adopted, the valuer being guided by his general experience as well as by the evidence.

8 *Cartwright* v. *Sculcoates Union*, *supra*.

9 The number and depth of zones will depend on the size and class of the hereditaments being analysed and the value of the front zone. Where Zone B is taken at half the value of Zone A and Zone C at half the value of Zone B, this is called "halving back," but halving back is not necessarily right in all cases or for all zones: *British Home Stores* v. *Burton* (1958) 51 R. & I.T. 665, L.T., but the point is obviously a practical consideration and not a matter of rule.

10 In *Alfred Earnshaw & Co.* v. *Harrison* (1958) 51 R. & I.T. 542, L.T., it was said that in deriving a rental value from comparable properties it is necessary to be satisfied that (a) the rents considered conform to the hypothetical figure (*i.e.*, the definition of gross value); (b) adjustments made to relate the appeal hereditament to the known examples of rent have been correctly made: and (c) proper adjustments have been made for size (para. 51).

which there is reliable modern rental evidence. Next, the rents are adjusted to eliminate relatively to the rent special advantages and disadvantages [11] and then further adjusted so as to conform to the liabilities of landlord and tenant as in the definition of gross value. The rent of each hereditament will now be divided by its reduced area, the answer being the equivalent rent per foot super of Zone A. Comparing the answers for the various hereditaments it may be seen that there is a value to which the majority approximate, any results seriously out of line being disregarded. If the reduced area of each hereditament is multiplied by the value per foot super of Zone A deduced from the analysis, the result will be a series of rental values having a common foundation. Additions or deductions relative to this rental value can now be made for special advantages or disadvantages of each hereditament giving a series of justifiable assessments.

47. Alternatively, to test the gross value of a particular hereditament, the ratepayer or his valuer can ascertain the reduced area of a number of comparable hereditaments, eliminate from their gross values the effects of special advantages or disadvantages, and ascertain in each case the basic gross value per foot super of Zone A for comparison with the like value for the hereditament under consideration.

48. It is important in applying this method to compare like with like. Very shallow shops, such as tobacco kiosks, may have a value per foot super far higher than that analysed for Zone A. Rents per foot super deduced from small shops should not be applied to shops which are very much larger.[12] Each floor of a building in one occupation must be considered in relation to the general use of the hereditament and not as it might be used if separately let. A first floor used by a shopkeeper for storage cannot be compared with a first floor separately let as offices since the value of the ground floor may depend on space for storage being available and if there is no basement, or no dry basement, the first floor may be the only suitable space available. Where upper parts are separately let they should be the subject of a separate analysis. Values for separate

[11] As to advantages and disadvantages in the case of shops see paras. 65 to 71. Briefly they would be such things as poor planning, a set back in the frontage, structural piers or columns in the windows or serving space, changes in floor level necessitating steps, superior construction (so far as adding to the rental value by prestige, etc.), poor appearance, damp storage, poor sanitary accommodation and the like. It has been held that no adjustment should be made for air conditioning, central heating, sprinkler system, and internal telephone system: *Mayes & Son* v. *Harding* (1959) 52 R. & I.T. 58, L.T. (see this case also as to relative value of upper floors).

[12] *British Home Stores* v. *Burton*, *supra*. Sometimes the only evidence of rents is that of smaller shops when its application to larger shops becomes a matter of opinion evidence. See also para. 51.

occupations, however, are not always not in point. A basement separately let to, say, a hairdresser, may be some guide to the value of a basement which a ground floor tenant has adapted and added to his serving space.[13]

Gross floor area

49. This is the area inside the external walls including lavatories, but excluding internal main walls, staircases and passages (useful lobbies would be included). Areas on this basis are really only suitable for the comparison of houses of similar construction.[14]

Reduced covered area

50. In this method of measurement the outside dimensions of each storey are taken so as to give the area of site covered thereby including the outer walls. A proportionate value may be ascribed to each storey as in para. 45, *e.g.*,

$$\begin{aligned} &\text{Ground floor area} \times 1 = a \\ &\text{First floor area} \times 1 = b \\ &\text{Second floor area} \times \tfrac{3}{4} = c \\ &\text{Reduced covered area} = a + b + c \end{aligned}$$

This can be applied to rents or assessments as in paras. 46 and 47, but the method is really only suitable for the comparison of houses.[15]

Quantity allowance

51. In very large hereditaments an allowance for bulk may be made on the assumption that a tenant taking a tenancy of a large area would not expect to pay a rent proportionate to that charged for a much smaller area. This argument is only valid where the valuation is based on rents per foot super derived from an analysis of smaller hereditaments. Where there are rents of larger properties, these should be separately analysed and a quantity allowance could not then be justified. However, there is often insufficient evidence of rents of larger stores to enable a separate analysis to be made and it is then a question whether the demand for stores in the locality is sufficient to keep the possible rental bid proportionate to the rents of smaller shops or whether a quantity allowance should be made.[16]

[13] As to "quantity allowance" see para. 51.
[14] See also para. 53.
[15] See also para. 53.
[16] See cases in notes 10, 11 and 12, *ante;* also *Hanger Motor Co. (Birmingham)* v. *Almond* (1960) 53 R. & I.T. 118, L.T.; *Chesterfield & District Co-op. Socy.* v. *Chesterfield B.C.* (1959) 52 R. & I.T. 209; *Fine-Fare Ltd.* v. *Burton* (1958) 51 R. & I.T. 665, L.T.; *Sheffield City Council* v. *Cockayne Ltd.* (1958) 51 R. & I.T. 810, L.T.

Selling or purchase price

52. Selling or purchase price is not a basis from which a proper assessment can be determined.[17]

VI. Assessment of Various Types of Hereditaments

Houses

53. Houses are almost invariably valued by the comparative method.[1] Where comparable houses are substantially similar, the rents may be compared directly and, after adjustment for variations, a basic rental value fixed for the type of house; but for reasons given in the next paragraph it may be desirable to break down the rent to a basic rent per foot super as noted in para. 44. In most cases the rental evidence will need to be analysed in this way, a basic rental value per foot super [2] deduced, and this applied

[17] *Peche* v. *Wilkins* (1959) 52 R. & I.T. 86, C.A. Selling price depends on the interest sold, the terms of any lettings, the state of repair, the standard of construction, and the potentialities of the property and is accordingly an unsuitable medium for ascertaining rental value. It may also include something for vacant possession and fixtures and fittings taken over by the purchaser. Where selling price is arrived at by capitalisation of rental value, the rate of interest at which capitalisation is effected may be anything from 5 per cent. to 10 per cent. or more according to the nature, class and construction of the property and prevailing interest rates; and in arriving at rental value from a given capital value the rate of interest within that range normally applicable to like hereditaments would have to be considered together with the reasons, if any, for not applying the rate which would otherwise be appropriate. See also *Munday* v. *Mason* (1960) 53 R. & I.T. 674, C.A.

[1] Para. 41.

[2] (i) This will usually be based on either the gross floor area (para. 49) or more probably on the reduced covered area (para. 50). The important thing in measuring areas is to keep to the same method throughout: *Meridith* v. *Avery* (1958) 51 R. & I.T. 779, L.T., and no method has been given express preference by the Tribunal. See also (iii) *infra*. Floor area is not always the conclusive answer. In one locality three spacious bedrooms may be preferred to four cramped ones and the reverse in another locality. Where the class of the property has deteriorated the rooms may be found to be overlarge and disliked as expensive to furnish and heat. There must always be consideration of the things which would affect the mind of the likely tenant. Other methods of comparing houses have been attempted, but the Tribunal has expressed a preference for areas and an analysis of the advantages and disadvantages so that it can be seen just what allowances have been made therefor by each side. See *Lane* v. *Taverner* (1958) 51 R. & I.T. 253, L.T.; *Amble Club Ltd.* v. *Robertson* (1958) 51 R. & I.T. 622, L.T.

(ii) Areas per foot super are to be applied intelligently to houses within accepted limits of size and similar in type. A rent per foot super deduced from rents passing for small houses will be of no value in relation to houses which are much larger or different in character: *Davies* v. *Payne* (1959) 52 R. & I.T. 653, L.T.

Rents per f.s. for bungalows may be found to be higher than those for houses.

(iii) Large country houses and mansions are often valued on the basis of carpet area (para. 43) and, instead of a rent per foot super, a rent per "square" of 100 feet super may be adopted, *e.g.*, instead of 2s. 0d. per foot super the valuer may adopt £10 per square. Principal rooms, which may be lofty and expensively appointed, may be taken at a higher rent per foot super

to each house with adjustments for individual additions,[3] omissions, advantages and disadvantages, *e.g.*, if a basic rental value of 2s. 0d. per foot super of reduced covered area has been deduced and the reduced covered area of the house in question is 900 feet super, the basic rental value of the house would be £90. If the house has, say, an additional ground floor w.c., a spot addition therefor would be made, the amount depending on whether this was contrived in existing floor space with, perhaps, some loss of other amenity, or wholly additional, and whether the improvement included also a fitted lavatory basin. The addition should not be nominal or related to floor area since the fittings, plumbing and drainage involved are costly and normally a person taking a tenancy of the empty hereditament would be quite willing to pay reasonably for the amenity.

54. Comparison may be made with hereditaments in other rating areas [4] provided the areas are comparable in character and value. In comparing rents, particularly where there are large estates in single ownership, it may be necessary to look further afield since there is no reason why a harsh or lenient policy of an owner should be reflected in assessments. It may also be necessary in making the 1963 lists to bear in mind the common discrepancy in the rents charged to decontrolled sitting tenants and new tenants of similar houses, as well as the discrepancy between controlled rents and the free rents of similar houses which have become decontrolled on vacancy.

or square than secondary rooms and offices, and it is these differences that make carpet area the better basis for valuation in such cases.

(iv) Basements may be left rough and are often of small value and may then be taken at a spot figure of, perhaps, £3 or more according to size, freedom from damp, headroom, accessibility, and general utility. Most basements will save the cost of an outside coal bunker and may be useful for keeping the wringer, carrying out home carpentry and the like, this often saving an outside shed, a material consideration on a small site.

(v) Where a house in single occupation rises above first floor level, the upper floors are usually taken at a reducing fraction of the ground and first floor value, the second floor being taken as perhaps only half the lower floor value, but where there are lodgers this may be too lenient.

[3] In ascertaining the gross value of a hereditament no account is to be taken of any structure belonging to the Minister of Health and supplied by him or the Minister of Pensions for the accommodation of an invalid chair or other vehicle (whether mechanically propelled or not) constructed or adapted for use by invalids or disabled persons, or any structure supplied for use for the purposes of s. 28 (1) or 29 of the National Health Service Act, 1946, and any similar structure (1955 Act, s. 9 (1)). The specified structures include those for the use of persons suffering from illness or mental defectiveness and the welfare of the blind, deaf, dumb or otherwise handicapped persons. "Structure supplied" means something in the nature of an appendage to substantial buildings rather than substantial buildings themselves and gives an impression of prefabrication or impermanence: *Jewish Blind Society* v. *Henning* (1960) 53 R. & I.T. 767, C.A.

[4] Para. 19, note 8, *ante* (Article 1).

55. Things affecting the rental value of a house are type of locality, whether it is a terrace, semi-detached, or detached house, and in the two latter cases whether there is merely a side entrance (with greater width for the full depth of the plot) or a garage or room for parking a car [5]; the number of storeys; the size of gardens at front and rear; the standard of planning, construction and appearance; age [6]; a difference of floor level between kitchen and living rooms; the appointments, particularly in kitchen and bathroom (including whether there is a domestic boiler); absence of bathroom or separate bathroom and w.c., or the existence of an additional w.c.; ceiling heights; bad lighting owing to nearness or height of neighbouring buildings or size of windows; liability to flooding; main and local transport facilities; distance from shops, schools and places of entertainment; outlook and aspect at front and rear; nature of neighbouring premises, including proximity to railway line, sewage farm, council housing estate, school, all night transport café, public-house, or other depreciatory user; unmade access road in bad condition; side way or road subject to noisy user (damage to fencing could not be directly considered since the landlord is assumed to be liable for repairs); and any other matter likely to affect the mind of a prospective tenant. If his mind and the rental bid he might be expected to make would be affected, it is immaterial that it is a matter of prejudice [7] so long as it is a prejudice which is common in the letting market and not just personal to the actual occupier.

56. In the case of a large country house or mansion size, age, degree of modernisation, stabling, car space, and access to town are important considerations, possibly also hunting. With such hereditaments an expert witness is essential as rental evidence is usually scarce and possible comparables may be so far apart that convincing comparisons call for specialist experience and information.

57. It will not as a rule be sufficient for a ratepayer just to allege that certain things are depreciatory: unless they are commonly accepted as being depreciatory it must be established that

[5] Para. 17, note 12 (iii), *ante* (Article 1). A new semi-detached house must earn sufficient income to justify the additional land, the independent external wall instead of half a party wall, the side gate and paving, and the additional fencing at front and rear of the wider plot. As semi-detached houses are generally preferred to terrace houses, presumably tenants are willing to pay a reasonable amount for the amenity and the additional assessment should not be nominal. A detached house with one flank wall on the boundary has no advantage over a semi-detached house.

[6] A modern house generally has a pull over an older one even without anything material which can be nailed down as an advantage or disadvantage; conversely age is not always a disadvantage and a period house with a reasonably modernised interior may have a high value.

[7] *Cf. Russell* v. *Bradfield D.C.* (1957) 8 P. & C.R., L.T.

they do affect value in the particular case and in any event the extent of the effect must be established, this usually calling for expert evidence. Where, however, the valuation officer, who is an expert, has conceded that something is detrimental, the Tribunal seems to be willing to exercise its own judgment as to whether he has made sufficient allowance therefor even if all there is to the contrary is the unbacked opinion of the ratepayer.[8]

58. As noted in para. 11, no account is to be taken of services provided by the landlord other than in the repair and maintenance of the hereditament.[9] As to weekly and monthly rents see para. 21, as to repairing leases para. 25, as to premiums and tenants' improvements para. 26, as to inclusive rents para. 28, and as to equated rents para. 29. As noted in para. 20 council house rents have been rejected as evidence of value on a number of occasions and isolated rents are to be treated with caution. In the case of a vicarage regard is to be had to the conditions of tenancy imposed by section 59 of the Pluralities Act, 1838.[10] The special provisions of the 1953 Act as to the valuation of agricultural dwelling-houses will not apply to the 1963 lists.

Houses occupied in parts

59. Where a building which has been constructed or adapted for the purpose of a single dwelling-house, or as to part thereof for that purpose and as to the remainder for some other purpose, is occupied in parts, the valuation officer may, if he thinks fit to do so in all the circumstances, including the extent, if any, to which the parts separately occupied have been severed by structural alterations, treat the building or any part thereof as a single hereditament, when the person receiving the rents of the parts of the single hereditament will be deemed to be the occupier thereof.[11]

[8] See para. 128, *post* (Article 3).

[9] This rarely arises in the case of houses except where they are let furnished, but in that event the furnished rents may be disregarded and the assessment based on unfurnished rental evidence. See also para. 60 and *Murray* v. *Newbigging*, para. 11, note 7, *ante* (Article 1) (this concerned an approach road to a house, the road being outside the hereditament; the cost of maintaining the road was treated as a landlord's service).

[10] See *Clibbon* v. *Scaife* (1959) 52 R. & I.T. 575.

[11] (i) These provisions are the same as those previously in s. 23 of the 1925 Act, the wording of which was always considered to be unsatisfactory. The reference to "rents" may mean where rents are payable: if so, an owner might be rated on a part let rent free, but if not, a part owner-occupied would have to be separately assessed. Possibly the reference to a building constructed or adapted as a single dwelling-house becoming occupied in parts means in residential parts, or, if all the parts need not be residential, presumably one must be, otherwise a building wholly let in suites of offices could be assessed as a whole although no different from a building constructed for that purpose. Since regard is to be had to the degree of structural severance, presumably a structurally separate self-contained flat should be excluded from a bulk assessment. The intention would seem to have been to enable single assessments to

60. The gross value of the single hereditament relative to the actual rents can be built up by ascertaining the aggregate of the rents (plus the corresponding rental value of any part occupied by the ratepayer) and deducting therefrom the total cost of services such as cleaning and lighting the staircase, depreciation of stair carpet and linoleum on the landings, maintenance of front garden, and an allowance for the cost of management, possible losses from voids, and the profit a person would require for taking on a yearly tenancy of the whole.[12] This allowance is often taken at 20 per cent. or 25 per cent. of the aggregate rents, according to the prospects of loss from voids. Since the actual rents would be inclusive of rates, the foregoing calculation would give the quasi-gross value plus rates, and from this the quasi-gross value itself could be calculated by the same formula as that used in para. 29. This figure would be compared with the corresponding figure deduced for comparable hereditaments as in para. 53. Where there are differences in the number of storeys in the houses compared it may be necessary to determine by analysis rental values per foot super for different floors. Each floor could then be valued separately and the aggregate for each building determined or the relative values could be used in calculating the reduced covered areas as in para. 50.

Flats

61. What is being considered here is blocks of structurally separate flats, each flat being entitled to be separately assessed.[13]

be made of dwelling-houses so far as let out to more than one family in undivided parts, but the phraseology is loose and ambiguous.

(ii) Where there have been no structural alterations to an ordinary house and the landlord resides therein and lets off rooms or suites of rooms, the prima facie assumption is that he retains control of the house and that the sub-occupiers are lodgers, even though tenants for purposes of the Rent Acts. In such a case the house should be assessed as a single hereditament irrespective of s. 57 of the 1948 Act: *Helman* v. *Horsham & Worthing A.C.* (1949) 42 R. & I.T. 148, 158, C.A. There was, however, no evidence offered in that case to rebut the presumption that the landlord retained control and each case must be considered on its own merits.

(iii) Whether a building or part to which the section applies should be made the subject of a single assessment is a matter for the discretion of the valuation officer ("if he thinks fit") and so long as he has had regard to all the circumstances it may well be that his decision is final. "Circumstances" includes the possibility of voids: *Gaskell* v. *Green* (1960) 53 R. & I.T. 267, L.T.

12 See para. 11 as to services. The person paying the rates would not be entitled to any allowance as under s. 11 of the 1925 Act, but would have to pay rates on the whole assessment unless the hereditament was wholly unoccupied. A person taking a yearly tenancy of a house in such circumstances would require not only to be covered for the cost of services and the management he would be involved in as tenant of the whole, together with his possible losses through paying rates on a single assessment, but he would also require some personal recompense for his own time and trouble.

13 See note 11 to para. 59. S. 57 of the 1948 Act is not intended to be applied to blocks of self-contained and structurally separate flats.

Flats range from small working class flats to large luxury flats, but the basis of assessment is the same, the practical difference being in the scale of the landlord's services, ranging from the mere maintenance, cleaning and lighting of the entrance staircases to extensive services including running lifts, central heating and constant hot water, resident porter and other staff, etc. Flats are dwelling-houses and affected by the same matters as affect houses, but rents for houses cannot be used as comparisons for flats, which have their own rental market. Unless properly planned and built they may also suffer considerably from the problem of noise conduction and lack of privacy where adjoining light wells.

62. In arriving at the assessments of a block of flats the usual method is to take the aggregate of the individual rents or rental values and determine the proportion thereof representing the average cost of services. The rents of the individual flats can then be adjusted to produce the gross value thereof. The rents taken into the aggregate must be compared to see that they are consistent, particularly in view of the common practice of treating sitting tenants more leniently than new tenants. There has hitherto been no general practice of comparing the resultant gross values of different blocks of flats, but differences in owners' rent policies may make this desirable when the 1963 lists are being prepared.

63. Perhaps the simplest way to explain how the gross values of flats are arrived at is to set out in shortened form and comment upon the actual figures of the ratepayers in the recent case *Peachey Property Corporation Ltd.* v. *Whaley*.[14]

	£
A. Total actual and estimated inclusive rents (*note a*)	15,458
Add for tenants' internal repairs (*note b*)	618
Taken as	16,086
Deduct adjustments in rents (*note c*)	464
	15,622
B. *Deductions* (*note d*)	
1. *Annual cost of services* (*note e*)	
(a) Porterage and cleaning (wages, insurances, clothing, employers' liability, utensils, cleaning materials, window cleaning, vermin destruction, additional garbage collection)	1,172
(b) *Maintenance of common ways, etc.* (*note f*) (carpets and furniture, public liability insurance, lighting, electric lamps, upkeep of roads, decoration of stairs and passages, fire extinguishers, depreciation of fittings, repairs to common parts) ...	639
(c) *Lifts* (4 passenger, 2 trade) (maintenance, repairs, current, insurance)	255
Carried forward	£2,066

[14] (1960) 53 R. & I.T. 656; and see (1961) 25 *Conveyancer* (N.S.) 25. The Minister has indicated that an amendment of the law may be added to the Rating and Valuation Bill to reverse part of this case.

Brought forward	£2,066
(d) *Central heating and hot water* (fuel, boiler insurance, water softening salt, repairs to plant, pump maintenance contract)	781
(e) *Garden upkeep* (gardener, plants, water charge)	147
(f) *Sundries* (insuring tenants' baggage, repairs to baggage room, special perils insurance, head porter's telephone, maintenance of 123 refrigerators)	227
(g) *Management and supervision of above services* (*note g*) ...	530
2. *Profit on services* (*note h*)	—
3. (a) *Interest on installations* (*note i*) (boilers, etc., working capital, 7½ per cent. on £12,449)	—
(b) *Depreciation* (*note j*)	813
4. *Unproductive services* (*note k*)	310
	4,874

C. Deductions £4,873 = 31 per cent. of adjusted rents of £15,622 (*note d*)

D. *Typical assessment of individual flat*

Rent of flat (*note l*)	£110
Add tenant's repairs	5
	115
Deduct services 31 per cent. (*note d*)	36
Gross value plus general and water rates at 13s. 2d. in £	79

Gross Value £53, Rateable Value (by scale) £38

a See para. 62. Note also para. 58. Tenants are commonly liable to pay the excess of rates over a certain amount and in some cases increases in cost of services, but where tenancies have been granted at different dates the basis of the tenants' liability may vary with different flats. What has to be determined is a consistent level of rents as at the valuation dates, having regard to the then cost of services.

b Additions for tenants' repairs were made on the basis of 4 per cent. of the inclusive rent. The custom is to add 5 per cent. to the rent less services and rates and the Tribunal allowed 4 per cent. of the gross rents.

c A deduction of 3 per cent. was made for inducements to tenants in the form of initial rent concessions, free leases and advertising to let, these being common in 1939 when there was a tenants' market and still allowable in 1956 under the wording of the 1953 Act.

d See para. 11, *ante* (Article 1), as to proviso to section 68 (1) of the 1925 Act, The costs of services would vary from year to year and average figures would be adopted.

e Wages presumably included rent, rates, heating and lighting of the resident head porter's free flat. The gross value of the flat is generally adopted as the rent.

f The deductions for roads, decorations of staircases, etc., fire extinguishers, depreciation of fittings and repairs were contested by the valuation officer, but allowed, following the *Bell* case (*Bell Property Trust Ltd.* v. *Hampstead A.C.* (1940) 33 R. & I.T. 108, C.A.).

g (i) Management and supervision of services would presumably include office costs in engaging, supervising, paying and insuring porter staff, including an allowance for office salaries and ancillary payments, office rent, rates, repairs, cleaning, heating, lighting and other services, interest on and maintenance of office furniture and equipment, stationery and telephone. The office work involved in addition to dealing with porter staff includes dealing with accounts for general rate, water rate, gas, electricity, fuel, cleaning materials, petty cash, aerial maintenance, fire extinguisher maintenance, vermin destruction, boiler and lift maintenance and insurance, refrigerator maintenance, checking performance of contracts, making payments and securing receipts and incidental bookkeeping.

(ii) A common allowance for management and supervision is 15 per cent. of the cost of the items specified in 1 (a) to (f). In the *Peachey* case it works out at one-sixth or 16⅔ per cent. The cost does not increase proportionately with

the size of the building or the number of the services and a good deal of supervision may take place when the managing surveyor is on the premises for other purposes, *e.g.*, seeing a tenant or in connection with repairs. Where the property management work of the owning company or managing company is extensive the cost is probably a good deal less than 15 per cent.

h This was allowed in the *Bell* case, but disallowed in the 1956 lists by s. 6 of the 1953 Act and so not claimed here. An alternative claim of £230 was made as the benefit which should accrue to the landlords for providing services in bulk, but this was rejected as simply another name for profit. Profit has not ceased to be claimable for services in office premises and with the reversion to the 1925 Act as to houses and flats, etc., for the 1963 lists (para. 14, note 26), it will be possible to claim profit in respect of flats in making assessments for those lists.

i Interest on installations was disallowed in the *Bell* case and again in the *Peachey* case. The basis of claim was that the landlord loses income on the sum invested in the installations; alternatively it is the rent he would have to pay if he did not provide them himself. The Tribunal held that the amenities provided by the availability of the services are part of the rateable premises and because of the availability of the services the landlord will get a higher rent than he would do without the services. This extra rent is his return on capital. *Cf.* para. 11, note 22: capital has been spent outside the demised hereditament to improve its rental value and that must be distinguished from a service.

j Depreciation of installations was allowed in the *Bell* and *Peachey* cases. The assets are wasting assets and would have to be replaced in due course; a sinking fund for that purpose is a proper allowance. *Cf.* para. 11, note 7, *ante* (Article 1); it is a revenue expense to maintain the rental value. The allowances in the *Peachey* case were boilers 10 per cent. of capital value, water softening plant 7½ per cent., boiler house, staff rooms, etc., 5 per cent., lifts 7½ per cent., baggage rooms 5 per cent., gardening works 5 per cent., wireless installations 20 per cent. and refrigerators 10 per cent. These seem to be liberal compared with income tax depreciation allowances, *e.g.*, $\frac{5}{4} \times 7\frac{1}{2}$ per cent. = 9·375 per cent. for electrical plant and $\times$ 5 per cent. = 6·25 per cent. for steam and hot water plant. Renewals would be included in a maintenance claim or a machinery and plant investment or initial allowance claim, so that it cannot be said that the depreciation has to be met out of taxed income (when every £1 of sinking fund would require an income of £1 12s. 8d.).

k This was allowed in the *Bell* case and for this reason the Tribunal allowed it with reluctance in the *Peachey* case. The point is that if the landlord spends £100 on services and only 95 per cent. of his flats are let, he recovers only £95 from his tenants for his £100 outlay; therefore, if the normal voids are 5 per cent. he should be able to include in his expenses the 5 per cent. he cannot recover. The Tribunal thought it wrong that, after the landlord had been allowed the whole of his expenditure, this should be increased, but the real fallacy is, perhaps, that the claim looks at the matter through the eyes of the landlord instead of the tenant. The tenant would not be willing to pay a penny more rent (probably less) if 95 per cent. of the flats were void, but the unproductive expenditure argument assumes that he would be paying 95 per cent. more for services and correspondingly less for the accommodation.

l See *note a*.

Shops

64. Shops vary from the small corner shop to the big departmental store. Every such corner shop is to some extent unique and the rent at which it is let will be strong evidence of its value.[15] In a parade of shops there may be sufficient rental evidence and the shops may be so substantially similar that a rental level can be fixed without reference to the reduced area and zoning[16]; but as noted in the case of houses[17] it will usually be desirable, and in most cases necessary, to make an analysis of the rental evidence.

[15] Paras. 19 and 20 (Article 1). As to corner shops generally see para. 67c.
[16] Para. 43.
[17] Para. 53.

Shops are almost invariably valued according to the comparative method.[18]

65. The most important consideration in the case of a shop is position. In most shopping positions there is a best side of the road and a best part of the road. Values will often be found to tail off sharply towards the ends of an area, while a street running off the best area may be found to have a high value for secondary shopping (particularly sought after by the smaller traders squeezed out of the plum positions by the multiples).

66. After position comes the length of frontage and then the depth and planning. The age and appearance of the building often matter little and in some areas many upper parts will be found to have a most neglected and dilapidated look. A reasonable storey height is necessary, but except in the large open shop anything above 12 feet is of little importance. An odd shape with awkward recesses and corners is undesirable; a negotiating new tenant will make the most of the disadvantage however cleverly he may overcome it when in occupation. Changes of floor level requiring steps are a disadvantage, especially in a small shop. Steps at the entrance are an especially bad bargaining point for the landlord, although customers do not seem to be greatly deterred by two or three shallow steps, while if the window bed is at floor level the window display is unaffected, except where the shopkeeper is one who prefers his window bed almost at pavement level. However, demand is for a floor near to pavement level and it is demand which determines value. Piers unduly breaking up the display frontage or affecting the freedom of internal lay-out are prejudicial to value. Where there is a basement it will be material whether it is usable as service space or simply for storage, and whether it is dry and free from risk of flooding. A yard is essential to a business having wet or perishable refuse.

67. Near-by parking facilities for customers are important to a main position and a rear accommodation road for deliveries is valuable to a large shop.

67a. Neighbouring premises may have a considerable effect on trade and hence on rental value, *e.g.*, a bank and, even more, a church is a dead spot from a shopping point of view, breaking the continuity of the display frontage, and the immediately adjoining premises will be worth less than those in the continuity of shopping

[18] Para. 41. Note especially para. 48 as to the application to big shops of rents per f.s. deduced from small shops and as to very small shops such as kiosks. See also para. 58. The contractor's method carries little weight in the case of shops: *Bentall's Ltd.* v. *Surrey* (*N.E. Area*) *A.C.* (1938) 28 R. & I.T. 149, and would probably be rejected entirely by the Lands Tribunal.

frontage. A position near one of the multiple stores is usually busy with shopping public, whereas being near to a cinema or railway station may be useful to a confectioner or tobacconist but not to most other trades, since persons using these types of premises are not bent on shopping. There may, however, be a considerable advertising value in a window near a cinema. Anything which attracts crowds, *e.g.*, a football ground or race track may be good for the class of shop catering for the passer-by, but not for the sort of shop relying on established patronage or the dedicated shopper. A bus stop may be an advantage or, if the pavement is narrow, a nuisance, especially if there is a shelter obstructing the view of the shop front and possible customers have to jostle to get by. A pedestrian crossing may be an advantage but guard rails a disadvantage.

67b. A short set-back in the frontage line, as where there has been rebuilding in a position where road widening is intended, may be a serious disadvantage until the adjoining premises are set back, but a longer set-back may only be harmful to the shops at the ends thereof. A recessed window where the pavement is narrow (the fascia being out on the normal building line) may help by enabling customers to study the display without being jostled, provided the frontage is not very narrow or the recess does not become a shelter for a bus stop.

67c. Corner premises are usually worth more than those in a terrace, but this depends very much on how far the return frontage adds to the publicity and display possibilities. A narrow alleyway may afford a poor view of the flank frontage and a window therein may be dangerous to persons looking into it and liable to be broken or splashed and disfigured by traffic. People alerting themselves for the crossing may even miss looking into much of the front window unless the pavement to the side road is reasonably wide. There is a method of zoning back from each frontage but it is not reliable.

67d. As to the possible effects of development plans, proposed compulsory acquisition, etc., see note 11 to para. 17. A trader proposing to build up a goodwill is especially undesirous of being disturbed in his occupation, whatever his rights to compensation for disturbance may be. Consequently schemes and proposals which may lead to disturbance have an especially bad effect on shop rental values.

67e. Shops often form part of blocks of flats or offices or other large buildings and share in some of the common services of the building, *e.g.*, central heating and constant hot water and possibly

the common lavatories which are cleaned and lighted by the landlord. Where this is the case a suitable deduction must be made from the rent before using it for rating purposes.

Offices [18a]

68. Position is as important to some office tenants as it is to shopkeepers, *e.g.*, banks, insurance companies (except for less important branches), and building societies almost always prefer a ground floor office and, except perhaps in a town with a recognised office quarter, will usually desire to be in a main shopping frontage. The demands of prestige, transport facilities, or nearness to customers and potential customers will also lead other firms to seek a central position, although perhaps not on the ground floor. On the other hand many firms, notably professional firms, do not need to be so much in public eye. All they need is a position accessible to those with whom they have dealings and with more freedom for parking cars.

69. Ground floor offices have much in common with shops, except that it is the publicity value of the position rather than the display value which is important; consequently the general appearance of the building is not to be disregarded. Offices in shopping positions are generally assessed at the same level as shops and the zoning method applied.[19]

70. First floor front is usually good for publicity; especially if an external sign can be displayed in addition to the display of the name inside the windows, but above first floor the main advantage of front over back is usually a better outlook and possibly more privacy and better natural lighting.

71. The entrance and staircase to upper floors is important, a good entrance and staircase being essential to a good class business. A lift to the upper floors maintains a more even value to a high floor level than a staircase, but a good, well kept,[20] easy staircase

[18a] As to plant and machinery see para. 78 and note 27 thereto. Temporary partitioning erected by a tenant is not plant and may not affect rental value: *City of Sheffield* v. *Meadow Dairy* (1958) 51 R. & I.T. 233; *Hope* v. *Wellcome Foundation* (1960) 53 R. & I.T. 202.

[19] See, however, *Halifax Building Society* v. *Payne* (1960) 176 E.G. 1431, L.T., in which a ground floor office was three steps above pavement level and in consequence the Tribunal held not only that it could not be compared with the rental values per foot super for shops and offices in the same street where the ground floor was virtually at pavement level, but that the zoning method was not applicable. No reasons for this emerge from the decision.

[20] Although the assumption has to be made that a hereditament is kept in repair (para. 18, *ante* (Article 1)) there is no assumption that the services are always all they should be. A hereditament has to be valued having regard to the quality of the services provided. An ill-kept staircase may mean a smaller deduction from actual rents for cost of services (para. 63), but the injury to rental value may be more than any saving in this direction.

will usually maintain a reasonable value up to at least the third floor. The lift or lifts should be adequate for the premises they are intended to serve.

72. The upper floors of a modern building of good appearance have usually a higher rental value than those of an old building, but a dignified old building is often attractive to professional tenants. The common drawbacks in an old building are small rooms, poor lighting, floors out of level, old fashioned fireplaces, dust catching doors, skirtings and cornices, creaking and sometimes unduly steep staircases, and insufficient and unattractive toilets. Most tenants today prefer central heating.[21]

73. In a block of offices there may be services such as resident porter, lift service, central heating and hot water, etc.,[22] as in a block of flats; also cleaning and lighting the common lavatories. These matters are to be allowed for in the same way as shown for flats in para. 63. The warning in para. 62 as to rents is also applicable.

Factories

74. Large factories are probably more often owned than let (except when let by a purchaser as part of a capital transaction),[23] but in the case of the smaller light industrial factories, and smaller factories in older areas and on trading estates, lettings are common and comparative rental evidence will usually be available. In these cases the comparative method of valuation [24] will be possible, whereas in other cases it may be necessary to resort to the contractor's test.[25]

75. Location may be important. Some factories require a humid atmosphere, plenteous cheap water or proximity to raw materials. Easy access to the market for the products of the factory will, of course, be a prominent consideration to the tenant. To some industries a railway siding may be even more important than road access.

76. For some processes multi-storey buildings are essential while for others a single storey lay-out is preferred. As a rule there is little value in exceptional height, but the load bearing capacity of the floors is often a material consideration. Loading facilities will be looked for. Natural lighting, ventilation and the location of lavatories are matters affecting industrial efficiency.

77. The control of location of new factories by the Board of Trade and planning authorities has a considerable effect on values.

21 See para. 63, *note i.*
22 See note 20, *supra.*
23 The rent in such a case is not evidence: para. 20.
24 Para. 41.
25 Para. 37.

In areas where increased industrialisation is discouraged, any industrial premises becoming vacant may have a scarcity value.[26]

78. The types of plant and machinery to be included in an assessment are set out in the Plant and Machinery Order, 1960.[27] Heating, lighting and other plant necessary to any occupation of the premises are generally taken to be included in the rent per foot super for floor space, but other plant and machinery is usually added at a percentage on effective capital value,[28] remembering (a) that whereas there may be depreciation in capital value as soon as machinery has been fixed and used, a tenant would probably pay as much rent for a used machine as for a new one, and (b) that with this class of hereditament net annual value is arrived at direct on the basis of the tenant being liable for repairs, insurance and other expenses as specified in para. 12. The valuation of any but the simplest factory is obviously a job for the specialist valuer.

Advertising stations

79. The position is somewhat muddled. Under the Advertising Stations (Rating) Act, 1889, provision is made for two cases:

(1) Land used temporarily or permanently for the exhibition of advertisements or for the erection of any hoarding, frame, post, wall or structure used for the exhibition of advertisements, *but not otherwise occupied*. In this case the person permitting the use or, if he cannot be ascertained, the owner is to be deemed to be in beneficial occupation of the land so used and rated according to the value of the use (" owner " means the person receiving or entitled to receive the rack rent of the land or premises, whether on his own account or as agent or trustee).

(2) Land as in (1), *but occupied and rateable for other purposes*. In this case the ordinary assessment of the hereditament is to be estimated to include the value of the advertising use.

Under section 56 of the 1948 Act, a third overriding case was brought into existence:

[26] See para. 20, note 17, *ante* (Article 1).

[27] S.I. 1960, No. 122. Chattels become rateable if they are enjoyed with the land and enhance its value: *L.C.C.* v. *Wilkins* [1957] A.C. 362. In *Woodward* v. *Brading & Blundell* (1951) 44 R. & I.T. 758 builders' portable huts were held not to be plant. For meaning of " plant " see *Yarmouth* v. *France* (1887) 19 Q.B. 647, accepted as applicable to rating in *J. Lyons & Co.* v. *A. G.* [1944] Ch. 281. Plant is to be distinguished from the setting in which the business is carried on: what is part of the setting is rateable therein, but what is plant is only rateable if included in the Order: see *Lyons* case, *supra*; *Chancery Lane Safe Deposit Co.* v. *Steedons* (1961) 1 R.V.R. 261, L.T.; *Hardiman* v. *Crystal Palace Football Club* (1955) 48 R. & I.T. 91, L.T.; *Dawkins* v. *Leamington B. C. and Warwickshire C. C.* (1961), 178 E.G. 293.

[28] The same principles will apply to ascertaining the effective capital value as in para. 37. See also para. 8 and note thereto, *ante* (Article 1).

(3) The right to use any land (including a hoarding, etc., as in (1)) for the purpose of exhibiting advertisements, if the person entitled to the advertising use is neither the occupier nor, if the land is otherwise unoccupied, the owner. In this case the advertising right is to be rated as a separate hereditament in the occupation of the person entitled to the right.

80. The net result appears to be that a separate assessment of the rights is to be made unless the rights are exercised by the occupier of the land, whether an owner-occupier or tenant-occupier. In practice a separate assessment is commonly made in all cases.

81. Where the 1948 Act applies and the right to use land for advertising purposes is let together with a right to erect a structure for the purpose, and the structure has been erected, the assessment must still be of the land without the structure, *i.e.*, solely of the right let.[29] Where the occupier erects the structure, whether to let or for his own use, it should apparently be taken into account in making the assessment of the advertising station or adding its value to that of the principal hereditament.

82. In most cases a rent will be passing for the advertising rights and it will be possible to apply the comparative basis of assessment,[30] but values differ widely and there are probably many rents which are much too low accepted by unadvised owners. Values may be related to the " sixteen " poster [31] or taken per foot super, especially in the case of small areas in very valuable positions.

Miscellaneous hereditaments

83. Cinemas and theatres are often valued on accounts, the income including that from the sale of ices, etc., screen advertising, bar, etc. For purposes of comparison with other hereditaments the value may be reduced to a value per seat. The contractor's test may be used on a new building as a check, but in general it may well be very misleading.

84. Garages and service stations may be valued on rental evidence, accounts or the contractor's test. Values are to some extent affected by planning control, permission to establish a service station only being granted after careful consideration of the traffic

[29] *Imperial Tobacco Co.* v. *Pierson* (1960) 53 R. & I.T. 469, H.L. In *Peak* v. *Henlys (Bournemouth) Ltd.* (1959) 52 R. & I.T. 305, L.T., an advertising sign did not fall within any of these provisions and was not rateable. The new Bill contains no provisions for amendment of this branch of rating law.

[30] Para. 43.

[31] *i.e.*, a poster containing 16 double-crown bills and measuring 10 ft. 0 in. × 6 ft. 8 in. A " 32 " poster has the second dimension doubled, *i.e.*, 13 ft. 4 in., and a " 48 " trebled. *i.e.*, 20 ft. 0 in.

problems involved. Location and the competition are important factors. In many cases there is a car showroom in addition to the normal garage services, and its value will depend very considerably on position. An increasing number of service stations are coming under the control of the petrol companies and let to an occupier tied to take his petrol from a particular company. In such circumstances the rent passing is no more evidence of value than the rent of a tied public house.

85. Licensed premises are commonly valued by reference to the barrelage of beer sold per annum. These valuations are very technical and usually dealt with by specialist valuers.

86. The same is true of licensed hotels. Ordinary hotels are commonly valued according to the number of bedrooms. In *Duval* v. *Woodward* [32] a basis was approved in which the number of " reduced bedrooms " was first ascertained. In this each best double bedroom is taken as 1 and a best single bedroom as, *e.g.*, ·7, with inferior rooms at appropriate rates, *e.g.*, second floor double bedrooms at ·75 and single bedrooms at ·5. The aggregate for the hotel gives the number of reduced bedrooms. Dividing this into the rent or assessment of the hotel and going through the same process with comparable hotels enables the comparative method to be applied, allowances being made for the individual advantages and disadvantages of each hereditament.

[32] (1959) 52 R. & I.T. 623, L.T.

PROBLEMS ARISING UNDER THE MAINTENANCE AGREEMENTS ACT, 1957

By Alec Samuels, Barrister-at-Law

The Maintenance Agreements Act, 1957, has prompted very little litigation, but still leaves many thorny problems unsolved despite the spate of matrimonial legislation, particularly in regard to maintenance, of the last few years.

Purposes of the Agreement

The Act applies to any agreement in writing made between the parties to a marriage for the purposes of their living separately. In *Ewart* v. *Ewart* [1] following a separation the husband and wife agreed to a reconciliation, which was effected on the terms of an agreement containing financial provisions, subsequently embodied in a deed. Several years later the husband left the wife and applied by way of originating summons in the Probate, Divorce and Admiralty Division claiming that the agreement should be altered. Lord Merriman P. held that the deed was made for the purposes of resuming cohabitation and not otherwise and that it was not made for the purposes of living separately. He refused to accept the arguments that every reconciliation contains the seeds of a breakdown or that an agreement making provision for the joint lives necessarily contemplates that it may have to operate during a possible future period of separation. There was no express provision in the deed for a resumption of cohabitation or a separation. On the evidence the agreement was entered into for the purpose of reconciliation. The intention of the parties may thus be inferred from the surrounding circumstances; where the parties are already divorced the purpose of the agreement would be obvious. It would appear that it is irrelevant whether the parties are living together or living apart at the time of the agreement provided that the agreement is directed towards ordering their relationship whilst they are living separately.[2]

Latest Time for Making an Agreement Alterable by the Act

The Act says that the court has jurisdiction to vary the terms of an agreement between the parties to a marriage where that

[1] [1958] 3 W.L.R. 680; [1958] 3 All E.R. 561.
[2] 107 *Law Journal* 744.

agreement was made not more than six months after the dissolution or annulment of the marriage. Since by the Matrimonial Causes (Property and Maintenance) Act, 1958, s. 1 (1), the court can now make an order for maintenance on pronouncing a decree or " at any time " thereafter it seems illogical to have retained this six months' time limit under the Maintenance Agreements Act, 1957, particularly since the wife cannot be prevented by any agreement from applying to the court if so advised.

Consideration

So far there has been no reported decision on the meaning of section 1 (2) which says that any provision purporting to restrict any right to apply to a court for an order containing financial arrangements shall be void but any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable. This has been taken to mean that an agreement to pay maintenance entered into for the consideration that the wife will not apply to the court is valid and binding upon the husband even though the consideration is void. This would appear to be so even where there is no other consideration, such as a promise not to pledge the husband's credit, moving from the wife. Furthermore it is still undecided whether a husband's promise in an agreement to pay maintenance is binding where the wife's consideration in not applying to the court is merely inferred by the court and not incorporated in the agreement itself, as happened in *Gaisberg* v. *Storr*.[3]

Change of Circumstances

Section 1 (3) (*a*) entitles the court to alter any agreement where it is satisfied that there has been a change in the circumstances in the light of which any financial arrangements in the agreement were made. In *K.* v. *K.*[4] the husband and the wife entered into a separation agreement in 1952. The husband offered to pay one-third of his fluctuating income, which was expected by both parties to rise, but the wife preferred a fixed sum of £750 p.a. less tax. In fact in every year since then, except one, one-third of the husband's income very considerably exceeded £750 p.a. The wife in 1952 suffered from osteo-arthritis and anticipated increasing disability; in fact her worst expectations were fulfilled by 1960. The question for the court to decide was whether there had been a change of circumstances when any expectation held at the time of the agreement

[3] [1950] 1 K.B. 107; [1949] 2 All E.R. 411 (C.A.).
[4] (1961) 105 S.J. 231; [1961] 2 All E.R. 266 (C.A.).

had been realised, and also whether the wife could rely upon a change of circumstances when she had voluntarily chosen an alternative which had turned out to be a very bad bargain. The Court of Appeal, reversing Cairns J.,[5] held that the change of circumstances must be one that was unexpected or not within the reasonable contemplation of the parties when they entered into the agreement.

This is a narrow interpretation. It had previously been believed that a mere change in the parties' financial circumstances, such as a change brought about by inflation, promotion or advancing years, would be a sufficient justification to entitle the court to intervene to alter the agreement. Indeed Lord Merthyr said in the House of Lords that if the value of money fell that would be a change of circumstances.[6] Is it now to be argued successfully against the wife seeking to secure the alteration of a maintenance agreement that she should have anticipated the continued pressure of inflation, or that the husband might receive a rising income over the years, or that she herself might become less able to work and help to support herself? If this be so it would appear that the wife should enter into a maintenance agreement only on the basis that she should receive £x p.a. or one-third (say) of the husband's gross income, whichever be the greater, or on some such basis which will give her some protection in possible foreseeable circumstances in the future. It is true that the wife can always try to obtain a matrimonial order in the court on the grounds of wilful neglect to maintain, but unless the sums payable under the maintenance agreement are totally inadequate then the husband is quite likely to be able successfully to resist the wife's claim by showing that he is honouring the agreement, even though he may not be paying very handsome sums under it.

Presumably if the wife were to commit adultery, or obtain a divorce and remarry, the husband could satisfy the court that there had been an unanticipated change of circumstances.

Alteration in the Magistrates' Court

Whereas the High Court can hear an application if both parties are domiciled or resident in England, the magistrates' court may only hear an application if both parties to the agreement are resident in England and one is resident in the court's petty sessions area. By section 1 (4) of the Maintenance Agreements Act, 1957, the magistrates' court cannot alter an agreement so as to order the rate of maintenance for the other party to exceed £5 p.w. or £1 10s.

[5] [1961] 1 All E.R. 130.
[6] H.L.Deb., Vol. 204, col. 58.

p.w. for any child of the marriage. It is odd that although under the Matrimonial Proceedings (Magistrates' Court) Act, 1960, s. 2, the financial limits for matrimonial orders are raised to £7 10s. p.w. for spouses and £2 10s. p.w. for children of the family no such amendment to the law has been made in the case of the Maintenance Agreements Act, 1957. Is this a legislative oversight? The wife who thinks she can obtain more than £5 p.w. will have to apply for a matrimonial order and not an order altering her maintenance agreement.

The expression " child of the marriage " remains in the 1957 Act whereas the 1960 Act speaks of a " child of the family." A " child of the marriage " is defined as a child of both parties (now necessarily legitimate since the Legitimacy Act, 1959, where his parents have married) and includes adopted children, whereas a child of the family includes not only a child of both parties but also a child of either party who has been accepted as one of the family by the other party. The importance of this point lies in the fact that whereas the court can alter any financial arrangements in a maintenance agreement, it can only insert new financial provisions where there were previously none for the benefit of the parties and a child of the marriage, but not a stepchild. Therefore if the husband and the wife live together and the husband supports the wife's child by a former husband, and upon separating they enter into an agreement which contains provision for the husband's stepchild, that provision may be varied under the Maintenance Agreements Act, 1957. But if the agreement contains no such provision the wife cannot apply to the court for the insertion of a provision for the step-child since it is not a child of the marriage. Her only remedy will be to seek a matrimonial order for the child as a child of the family, namely, a child of one of the parties who has been accepted at some time as a member of the family and as such supported by the husband.

Income Tax

Under the Income Tax Act, 1952, ss. 205–207, payments made under a court order are known as small maintenance payments not requiring deduction at source if they are within the limits of £5 p.w. for the wife and £1 10s. p.w. for a child of the family. From April 1, 1961, these limits are raised to £7 10s. p.w. and £2 10s. p.w. respectively.[7] It has been suggested that payments made in pursuance of orders of the court altering maintenance agreements

[7] Finance Act, 1960, s. 40.

under the Maintenance Agreements Act, 1957, are " small maintenance payments " because of the order of the court [8] but it is submitted that this view is erroneous since the Maintenance Agreements Act, 1957, s. 1 (3), says that " the court may by order make such alterations in the agreement . . . as may appear to the court to be just . . . and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration. . . ." This surely suggests that the liability to pay the altered amount is deemed to arise from the agreement and not the court order. In any event, the husband entering into a maintenance agreement should in his own interest make it abundantly plain in the agreement that the sum he is agreeing to pay is the gross sum, for if the sum agreed is construed as the net sum " free of tax " he runs the danger of the inland revenue authorities " grossing up " this net sum to the appropriate gross sum and looking to him for the difference between the gross sum and the net sum.

Alteration of Maintenance Agreement After Death of One Party

The Maintenance Agreements Act, 1957, s. 2, enables the widow (or widower) to apply to the court, where the deceased spouse died after August 17, 1957, domiciled in England, to alter a maintenance agreement within six months of representation being taken out for the deceased's estate, or subsequently with the court's permission. By a *Practice Direction*,[9] where it is necessary to obtain permission, the application for leave should be included in the summons for directions under rule 58A (6) of the Matrimonial Causes Rules, 1957. It should be noted that since the Matrimonial Causes (Property and Maintenance) Act, 1958, s. 3, a former wife who has not remarried in addition to a widow may apply to the court within six months of representation being taken out to the deceased's estate for an order for reasonable maintenance out of the estate. Thus a widow and a former wife who has not remarried may now apply to the court for an alteration of their maintenance agreement if it purports to continue to operate after the husband's or former husband's death; and in any event they may both apply for an order for reasonable maintenance out of the deceased's estate.

[8] See (1957) 21 *Conveyancer* (N.S.) 355.
[9] [1958] 2 W.L.R. 258; 1 All E.R. 464.

INJURIOUS AFFECTION AND COMPENSATION

By Walter Stern, m.a., Solicitor

I

The great expansion of the social activities of the state has naturally led to a large increase in the public use of land. A public body may have power to acquire land for such use, and it may then purchase the land required by agreement. But it may also be given power to take land compulsorily, and the procedure to be followed in such case and the compensation to be paid to the owner have been the subject of detailed legislation.

The execution of works of a public nature may also affect the rights of third persons, whether such works are carried out on land belonging to the public body responsible therefor or on other land (as, *e.g.*, road works). The position of such third parties is not so clear. Two principles may be stated:

(1) The public body may interfere with the rights of third persons only if it is authorised by statute to do so.

(2) If there is statutory authority for interference, then the person whose rights are affected is without remedy unless a remedy—and this means in practice compensation—is provided by statute: compensation is a statutory remedy.

Some statutes confer a right to compensation by direct enactment, *e.g.*, section 278 of the Public Health Act, 1936. More often the right to compensation depends on the incorporation of the Lands Clauses Acts with the statute conferring the power of interference.

It is true that the Lands Clauses Acts are a somewhat doubtful foundation of the law of compensation to third persons for injurious affection. The provisions in question, more particularly sections 18, 22, 23 and 68 of the Act of 1845, do not expressly confer a right to compensation. They deal with procedure, and only the fact that the procedure is directed towards the ascertainment of compensation not only for land taken but also for land injuriously affected is an indication that there are certain rights to such compensation. This is not all. The clauses of the Act of 1845 referring to injurious affection are included in that part of the Act preceded by the introductory words:

> " And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows."

Why the right of a third person injuriously affected by works done on land not taken from him should depend on whether the body authorised to do the work did acquire the land by agreement or compulsion is not clear. In the early days of the Act an attempt was made to avoid this result. In *Broadbent* v. *Imperial Gas Co.*[1] the plaintiff had suffered damage to his market garden from the manufacture of gas by the defendants and claimed an injunction. One issue in the case was whether the plaintiff was confined to a claim for compensation under section 68 of the Lands Clauses Act. The plaintiff denied this because the defendants had not acquired their land compulsorily and their special Act incorporated the Lands Clauses Act only "except so much thereof as relates exclusively to the purchase and taking of land by compulsion." But the Lord Chancellor, Lord Cranworth, said that "section 68 does not relate to the taking of land by compulsion although . . . it is found, according to the style and fancy of the legislature, inserted amongst those clauses which relate to the taking of land by compulsion." Lord Cranworth did not rely on his own view alone but asked for the opinion of two common-law judges, and this was delivered by Willes J., on behalf of himself and Crompton J., and was to the same effect, *i.e.*, that section 68 was incorporated in the special Act.

This sensible view did not prevail. It was decided that where the special Act excludes from incorporation the clauses of the Lands Clauses Act, 1845, relating to compulsory purchase, a third person injuriously affected had no right to compensation.[2] On the other hand, where these clauses are not excluded from incorporation with the special Act, compensation was assumed to be the appropriate remedy even though the acquisition of the land proceeded by agreement.[3]

Looking at the Lands Clauses Act alone, without taking into account the construction put on it by the courts, the most plausible view would appear to be that claims for compensation for injurious affection by third persons from whom no land has been taken are outside the scope of the Act, and that the injurious affection mentioned in several clauses is only that which arises to an owner part of whose land has been taken for public purposes, in respect of the remainder thereof. Such a construction would at once eliminate the inconsistencies mentioned. It would explain why the Lands Clauses Act does not expressly confer a right to compensation: this is not necessary since an intention to take away the

[1] (1859) 7 H.L.C. 600.
[2] *Ferrar* v. *Commissioners of Sewers* (1869) L.R. 4 Ex. 1 and 227.
[3] *Kirby* v. *Harrogate School Board* [1896] 1 Ch. 437.

property of a subject without compensation is not to be imputed to the legislature.[4] Accordingly it was only necessary to make provision for its assessment and matters incidental thereto, and the natural place for this was the part of the Act dealing with the compulsory purchase of land, since no question of assessment arises where the purchase price is agreed. Again, where part of his land is taken from an owner, the compensation to be assessed falls naturally into two distinct elements: the value of the land taken and the injury caused to his remaining land; it may well be that the parties agree on one of these elements, but not on the other, and where they agree on neither, section 49 of the Act expressly provides that the jury shall deliver separate verdicts. This natural division of compensation into two elements explains the reference in section 68 (which section is usually considered as the main foundation of the right of third persons to compensation) to lands "taken for *or* injuriously affected by the execution of the works." Finally, on this construction of the Lands Clauses Act there would be no question of treating third persons differently according to a circumstance which is accidental so far as they are concerned, namely, whether the land on which the work is carried out has been acquired by compulsion or by agreement.

It is true that, on this interpretation of the Act, there would not exist any general statute giving third persons a right to compensation. But this would only eliminate a further inconsistency, namely, the different treatment of injury caused by the execution and injury caused by the use of the works. Is there any reason why a person whose house suffers damage should be entitled to compensation if the damage results from excavations made for the construction of a railway, but should be without remedy if similar damage occurs through the vibrations caused by passing trains [5] or is due to fire caused by the emission of sparks from passing locomotives? [6] The legislature in the age of the industrial revolution was not so tender towards private rights as we might be inclined to think. The industrialisation of the country was evidently thought to be a first priority.

As it is, we are faced not with the Lands Clauses Act in its virgin state but with its elaboration by the courts, and it cannot be doubted that whenever the provisions of the Act relating to compulsory purchase are incorporated with the special Act authorising a public body to acquire land, third persons suffering damage through the execution of authorised works on land acquired by the

[4] *Central Control Board (Liquor Traffic)* v. *Cannon Brewery* [1919] A.C. 744.
[5] *Hammersmith Ry.* v. *Brand* (1869) L.R. 4 H.L. 171.
[6] *Vaughan* v. *Taff Vale Ry.* (1860) 29 L.J.Ex. 247.

body, whether by compulsion or agreement, can claim compensation.[7]

II

The Local Government Act, 1933, empowers, by section 157, local authorities to acquire land by agreement for the purpose of any of their functions under any public general Act. It makes, by section 176, the Lands Clauses Acts applicable to such acquisition but excepts the provisions relating to the acquisition of land otherwise than by agreement.

Accordingly, third persons whose rights are injuriously affected by works carried out by a local authority on land acquired by agreement cannot claim compensation. They would, then, be in a less favourable position than if the land subject to their rights had been taken compulsorily—unless, indeed, from the absence of a provision for compensation it must be concluded that a local authority is prevented from infringing their rights.

This is the conclusion which local authorities seem generally to have drawn and which has given rise to so-called friendly compulsory purchase orders: the local authority, combining forces with the owner of the land to be acquired, seeks to defeat the rights of third parties by applying the procedure for compulsory purchase to what is in fact an agreed acquisition. The provisions of clauses 16 to 68 of the Lands Clauses Act will then be put into force, including those clauses from which a right of third persons to compensation for injurious affection has been distilled. In truth, this procedure is usually only resorted to where the rights of third persons derive from restrictive covenants of which they are beneficiaries. The reason for this limitation is not clear. The works to be carried out on the land (details of which will, as a rule, not yet have been settled at the time of purchase) may interfere with other rights besides restrictive covenants such as rights of light or support, and in order to be safe a local authority should only in very clear cases proceed to purchase land by agreement, if the traditional understanding of section 176 is correct.

III

But is this reasoning correct, which places local authorities and, more generally, all persons authorised by statute to promote " undertakings or works of a public nature " [8] in the same position as private persons having no special powers? A statutory provision

[7] In the case of land acquired by agreement this is not more than a fair conclusion from the reasoning in *Kirby's* case; see *infra*, p. 228.
[8] Preamble to the Lands Clauses Act, 1845.

empowering a corporation to do certain things may have two different meanings:

(1) It may enable the corporation, if created by or under a statute and consequently restricted to the exercise of such powers as are expressly conferred upon it or reasonably incidental thereto, to do things which would otherwise be *ultra vires*, beyond the legal capacity of the corporation. A statutory provision having this effect does, to the extent to which it confers powers, place the corporation in the same position as an individual.[9]

(2) It may mean that the corporation shall have the right to exercise the powers thus conferred upon it notwithstanding any interference with the rights of others, thus exempting the corporation from its ordinary liability for such interference.

An Act of Parliament may authorise a corporate body to provide a hospital. If the enactment has the first meaning, the effect is that contracts entered into by the body for the purposes of the hospital are valid, that it cannot be stopped from applying its resources for those purposes and that no action for an injunction can be brought at the suit of the Attorney-General. If the enactment has the second meaning (which, as a rule, will not exclude the first meaning but will be additional thereto), then any interference with the rights of owners or occupiers of land in the neighbourhood by the erection or the conduct of the hospital, such as obstruction of ancient lights or disturbance through danger of infection, noise, etc., will be authorised and will not give rise to an action for nuisance.

But what is the test for deciding the meaning of a statutory power? In *Hammersmith Ry.* v. *Brand* [9] where a power to run a railway was held to authorise interference with neighbouring properties by vibration, noise and smoke Lord Chelmsford said that otherwise the power would be nugatory, and in the words of Lord Cairns, adopted by Lord Blackburn in *Metropolitan Asylum District* v. *Hill*,[10] a different construction of the Act would be a *reductio ad absurdum*.

This test no doubt meets cases such as those in which it was applied, where the statute defines the particular site on which the undertaking is to operate and specifies the works to be executed. If powers specified in this way and thereby limited did not enable

[9] This meaning of a statutory power was emphasised by Lord Bramwell in *Hammersmith Ry.* v. *Brand* (1869) L.R. 4 H.L. 171, and by Lord Watson in *Metropolitan Asylum District* v. *Hill* (1881) 6 App.Cas. 193.

[10] (1881) 6 App.Cas. 193.

the promoter of the undertaking to override the rights of third persons injuriously affected they would truly be valueless. But the test is not suitable where a public body exercises functions conferred in general terms. A board may have a duty to provide hospitals, or a local authority the duty to provide schools. In each case there will be statutory provision empowering the board or the local authority to acquire land for the purposes of those functions and (at least by implication) to use the land and execute works thereon for the said purposes, but the statute will not specify the land so to be used nor prescribe details of the works so to be executed. The board or the local authority will therefore have a choice. It is true that this choice is not very wide because it is limited by what a proper exercise of the statutory functions requires. The choice must take into account both technical factors such as the level of the site and the composition of the soil, and planning considerations which require, *e.g.*, a school to be within easy reach of the neighbourhood which it is to serve. Still, if the use of some particular site were made impossible or were rendered more difficult or more expensive by the existence of rights of third parties, it could not, as a rule, be said that the statute conferring the powers upon the public body would thereby be reduced to an absurdity.

In fact, the absurdity test has never been applied to determine whether a general statutory power vested in a public authority to use, and execute works upon, land for the purposes of its functions goes only to capacity, by eliminating the *ultra vires* doctrine, or implies a right of the authority to disregard the rights of third parties. It is sufficient to refer to *Kirby* v. *Harrogate School Board*,[11] *supra*, a case under the Elementary Education Act, 1870, which empowered school boards in general terms to provide public elementary schools for their districts. School buildings erected by the defendant school board projected by means of two bays or turrets beyond a distance of thirty feet from the boundary of adjoining land in breach of a covenant against building within that distance, and it was held that the covenantee could not maintain an action for breach of the covenant. Quite apart from the possibility of choosing a different site, a (probably quite slight) modification of the building plans so as to comply with the restrictions would have rendered the buildings unoffending, and it cannot be said that the necessity of guarding against a violation of private rights would have rendered the powers of the defendant school board nugatory.

[11] [1896] 1 Ch. 437.

In fact *Kirby's* case has been invoked as an authority for a different test for deciding the nature of a statutory power. Since the party injuriously affected was debarred from claiming an injunction or damages, the question was raised whether he was entitled to compensation. As mentioned before, the Lands Clauses Act, 1845, contains provisions relating to compensation under a heading which refers to compulsory purchase whereas the Harrogate School Board had purchased the land by private treaty, though under an Act which incorporated the Lands Clauses Acts, including the clauses relating to compulsory purchase. The answer to this question occupies the main part of the judgments in the Court of Appeal, and all the judges concurred in the conclusion that the plaintiff was entitled to compensation. The existence of a right to compensation has subsequently been considered as the reason for denying the plaintiff his common-law rights. But the course of the argument in the case as appearing from the judgment of A. L. Smith L.J. does not warrant such a conclusion. The defendants' answer to the plaintiff's common-law claim was " the shortest possible answer: they are authorised by statute to do what they are doing," and it was only in reply to plaintiff's argument that then he was without remedy that the court referred him to his claim to compensation. This reasoning shows some connection between a right to interfere and a claim to compensation, but is no authority for a strict correspondence between the right of interference and liability for compensation.

Similar considerations apply to another leading case which has been called in aid of the proposition " no compensation, no interference," namely, *Metropolitan Asylum District* v. *Hill*.[12] There are passages in some of the judgments delivered in the House of Lords which might seem to establish such a dependence, but it is sufficient to refer to the explanation of the decision given by Lord Blackburn (who took part in it) in *London & Brighton Ry.* v. *Truman*.[13] Adopting the words of Bowen L.J. in the Court of Appeal, he said that in *Hill's* case " there was not to be found in the Act any element of compulsion or any indication of intention to interfere with private rights," and he added that he did not think that the absence of one particular indication of the intention to interfere was decisive.

How slight the connection between injurious affection and compensation is, is shown by many cases. Amongst the oldest are those relating to the emission of sparks by locomotive steam engines: if such engines were used under statutory authority, damage inevitably caused by the emission of sparks did not give

[12] (1881) 6 App.Cas. 193.

[13] (1885) 11 App.Cas. 45.

rise to any claim,[14] however heavy the loss suffered might be, and it was only at the beginning of this century that legislation gave a very limited right to compensation. *Hammersmith Ry.* v. *Brand*,[15] in which vibration, smoke and noise caused by a railway was held not to give any right to compensation is based on the same principle. Proceeding to cases in which the location of the offending works is not by the empowering enactment limited to a particular site but the promoter has a choice, we find first another railway case, *London & Brighton Ry.* v. *Truman*,[13] where the company was authorised by its Act to acquire " up to fifty acres of additional land in such places as should be deemed eligible " for the purpose of providing additional stations and cattle and goods yards. Neighbours sought an injunction against the nuisance caused by cattle traffic, but it was held that the company was authorised to do what they did and not bound to choose a site more convenient to other persons. The absence of a right to compensation did not make any difference.

Again, there are the street works cases in which a public authority, empowered by Act of Parliament to execute street works in a particular district, leaves, by altering the street level, private property above or below the new level. " The law has," in the words of Lord Macnaghten in a case decided in 1902,[16] " been settled for the last hundred years." If persons " acting in the execution of a public trust and for the public benefit do an act which they are authorised by law to do and do it in a proper manner . . . the individual injured cannot maintain an action. He is without remedy unless a remedy is provided by statute." This was a case from Australia, but the principle is a common-law principle.

In the face of such cases it cannot be said that liability to compensation is a necessary or even an ordinary concomitant of the right of public authorities to interfere, in the exercise of their statutory powers, with the rights of third parties. An important case of more recent date confirming this position is *Edgington* v. *Swindon Corporation*.[17] The corporation was by Private Act empowered to erect and maintain bus shelters and to use for that purpose portions of the public streets. The owners of land adjoining one of the shelters sued them for damages on the ground that the shelter interfered with their right of access to the highway. Finlay L.J. (sitting as an additional judge of the King's Bench Division) dismissed the action on the ground that the legislature

[14] *R.* v. *Pease* (1832) 4 B. & Ad. 30; *Vaughan* v. *Taff Vale Ry.*, *ante*, note 6.
[15] (1869) L.R. 4 H.L. 171.
[16] *East Fremantle Corporation* v. *Annois* [1902] A.C. 213 (P.C.).
[17] [1939] 1 K.B. 86.

must have contemplated that it was at the very least probable that the erection of these shelters would interfere with the rights of private property, and had authorised such interference, notwithstanding the absence of a provision for compensation.

IV

In the face of these cases it cannot be said that where public works are likely to interfere with private property the law shows any great tenderness for the private rights affected. But this still leaves the question: what is the test for deciding whether a power conferred by statute on a public authority implies a right of interference with private rights?

The statute under consideration in *Edgington's* case was a Private Act of Parliament limited to the Corporation of Swindon and authorising the erection of bus shelters in public streets or roads. Not more than five shelters had been erected under the Act, and it was not difficult to see that the erection of these shelters was likely to interfere with the rights of frontagers. When we pass from an enactment with such limited scope to national legislation imposing on public (in particular local) authorities a duty to provide schools, health centres, old people's homes, it certainly cannot be said that the erection of every such building is likely to interfere with private rights. On the other hand, having regard in particular to the requirements of good planning which, in a densely populated country, are of the greatest importance and are actually recognised as vital by the whole trend of modern legislation, it can equally be said that if the duty of the public body is to be discharged properly, an invasion of private rights cannot be avoided completely, although it can be avoided in many cases. If the statute assigning to a public body a function of this kind were not construed as authorising in a proper case the invasion of third party rights, the object of the statute would be frustrated, the statute would, at least partially, be reduced *ad absurdum*. A construction of the statute avoiding this result so as to allow, in a proper case, the invasion of the rights of others, is not more than an adaptation of what we have called the absurdity test to the powers contained in modern general statutes. The test is no longer would the execution of the works specified in the special Act be frustrated if no interference with third party rights were allowed? but would the object of the statute be frustrated, if such an interference were not allowed in a proper case?—and this question will, as a rule, have to be answered in the affirmative, where a statute

assigns to a public authority a function the discharge of which is required in the public interest.

But what is a proper case? "I think," said Finlay L.J. in the case last mentioned, "that it is well settled . . . that, assuming the corporation have a right to do this at all, they must act reasonably." Some alternative sites had been suggested in that case, and the judgment discusses their suitability, concluding that the place chosen by the corporation was "a reasonable place on which to put a shelter."

Thus it is the test of reasonableness which offers the answer to our problem: a statute conferring on a public body for the purpose of any of their functions a power in general terms involving the execution of works is to be construed as authorising interference with the rights of third parties if such interference is the effect of a reasonable exercise of the power.

Comparing the position of a third person according as to whether the public authority has acquired the land on which the offending works are executed by compulsion or by agreement, we find that in the first case the third party has an opportunity to raise objections in the compulsory purchase procedure, or, if the power is conferred by a Private Act, in the Private Bill procedure. Once the Order has been confirmed or the Bill passed, he is confined, by the construction which the courts have put on the Lands Clauses Act, 1845, to a claim for compensation. If a local authority acquire land by private treaty, a third party has no opportunity of raising objections before the execution of the proposed works, let alone before the purchase by the authority of the land on which the works are to be carried out. Once these works are put into execution, he may be able to obtain the assistance of the ordinary courts if the local authority is acting unreasonably, but otherwise is without remedy.

Such is the position under the Local Government Act, 1933, s. 176, and under other statutes which either apply this section or contain a similar provision, such as section 24 of the Water Act, 1945, section 40 of the Town and Country Planning Act, 1947, or section 222 of the Highways Act, 1959. On the other hand, where a statute applies the provisions of the Lands Clauses Act, 1845, relating to compulsory taking to a purchase by agreement, a third party injuriously affected by the execution of some work on the land cannot sue the public body on the ground that the choice of the site was unreasonable, but the public body is under a liability to pay compensation to him, a liability which at the same time is

a right: a right on paying compensation to interfere with the third party's property without any formal proceedings and without having to justify the interference.

V

As mentioned before, section 176 of the Local Government Act, 1933, by omitting to incorporate those clauses of the Lands Clauses Act, 1845, relating to compulsory purchase, has given rise to the view that a local authority acquiring for the purpose of their statutory functions land by private treaty are bound by third party rights in the same way as any private person. In order to overcome this obstacle to an efficient discharge of their duties some authorities have obtained a Private Act of Parliament giving them in effect the right, on a purchase of land by agreement, to disregard third party rights, paying compensation for any injurious affection. If the view here taken on the effect of section 176 of the Local Government Act, 1933, is correct, the position in which these authorities have placed themselves is more onerous than it would be without such Private Act: they have exchanged their common law liability in the comparatively rare cases in which it could be said that they have acted unreasonably, for a statutory liability to pay compensation in all cases of injurious affection. On the other hand, the burden of such a liability for compensation does not appear to be heavy, and a local authority may well regard the expense caused thereby as an insurance premium against the risk which otherwise is always subsisting that they may in a particular case be prevented by a common law action from putting into effect the scheme which they think most beneficial and on which they may have expended money.

VI

The questions here discussed are prompted by the omission from incorporation in section 176 of the Local Government Act, 1933, of the provisions of the Lands Clauses Act, 1845, relating to injurious affection. The local authorities of the Metropolis are, it may be thought, in a more straightforward position because the London Government Act, 1939, in incorporating by section 99 the Lands Clauses Acts for the purposes of a purchase by private treaty, does not exclude from incorporation the clauses relating to compulsory purchase. And it may also be thought that nothing would be easier than to amend section 176 of the Local Government Act, 1933, by repealing the few words excluding these clauses from incorporation.

But here a last difficulty must be mentioned. Our concern is with injurious affection by the execution of works. " The works " are defined in clause 2 of the Lands Clauses Act, 1845, as meaning the works by the special Act authorised to be executed. In the case of a local authority purchasing land by agreement section 176 of the Local Government Act, 1933, provides that in construing the Lands Clauses Acts " this Act," *i.e.*, the Local Government Act, shall be deemed to be the special Act. If we scrutinise that Act to find out what works it authorises, we find nothing more than section 125 which deals with the provision of offices, town halls, etc., and we remember that local authorities are " all purposes " authorities and that, in order to find out what works they may execute, we must not consult the Local Government Act, 1933, which is mainly a constitutional Act, but the various statutes assigning them their functions in public health, education, housing, town planning, etc.

Thus on a literal construction the Local Government Act, 1933, does not authorise the execution of any works (apart from offices, etc.) and if the compensation clauses of the Lands Clauses Act, 1845, were incorporated in section 176 of the Local Government Act, 1933, they still would (with the said exception) not apply, and the position would not be different for the local authorities of the Metropolis in whose case the 1939 Act is declared to be the " special Act." Similarly those local authorities which have tried to alter the position by obtaining local Acts simply extending the incorporation of the Lands Clauses Act, 1845, to the clauses relating to compulsory taking would have achieved nothing.

Perhaps a more liberal construction of section 176 of the Local Government Act, 1933, and of the corresponding section of the London Government Act, 1939, can be justified: by authorising the purchase of land for the purpose of their statutory functions (it may be said) these enactments impliedly authorise the execution of the works required for a discharge of those functions. However that may be, any amendment of section 176 purporting to introduce those clauses of the Lands Clauses Act, 1845, relating to compulsory purchase should also make it clear that the works the execution of which is to give rise to a right to compensation, are the works executed by the authority for the purpose of discharging their functions.

Summary

1. The group of clauses in the Lands Clauses Act, 1845, relating to compulsory purchase (clauses 16 to 68) contain references to compensation for injurious affection which have been interpreted

to mean that whenever these clauses are incorporated with a special Act authorising the acquisition of land (whether by compulsion or by agreement) a landowner injuriously affected by the execution of works on the land so acquired has a right to compensation, but cannot claim an injunction or damages.

2. The Local Government Act, 1933, authorises, by section 157, local authorities to purchase land by agreement for the purpose of any of their statutory functions and, by section 176, incorporates for this purpose the Lands Clauses Act, 1845, but excepts from incorporation the before-mentioned clauses 16 to 68. An impression has arisen that if a local authority executes works on land purchased by agreement, a third person injuriously affected, not being entitled to compensation, can proceed against the local authority by an action for an injunction or for damages.

3. A review of the cases dealing with the construction of statutory powers shows that there is no general connection between a right to interfere and a liability to compensation. In the case of land acquired compulsorily the law is as stated under 1. Again, in the case of land acquired by agreement under an enactment incorporating clauses 16 to 68 of the Lands Clauses Act, 1845, it may be (if the reasoning in *Kirby's* case is correct) that the local authority can override the rights of third parties in every case but has to pay compensation. Apart from these two cases, the right of a local authority to interfere with the property of third parties depends on whether the object of the statute under which they exercise their powers would be frustrated unless they can so interfere in a proper case, and the case is a proper one if the local authority has acted reasonably in choosing the site, designing and executing any works and using the land and works. If on this test the interference is unlawful, the injured landowner can claim damages and an injunction (which is, of course, a discretionary remedy). If the interference is lawful, the injured landowner is without remedy, unless compensation is provided.

NOTES OF RECENT CASES

1. *REAL PROPERTY AND CONVEYANCING*

By F. R. Crane, ll.b., Solicitor

Re Boyle's Claim [1961] 1 W.L.R. 339;
[1961] 1 All E.R. 620 (Ch.D.)

Registration of title — rectification and indemnity — overriding interests—Land Registration Act, 1925.—This case involved an application for indemnity under the Land Registration Act, 1925, after an order for rectification of the register. Boyle, who made the claim, is, irritatingly, referred to as the " claimant " in the *Weekly Law Reports* and as the " applicant " in the *All England Reports*. In this note he will be referred to as " B."

In 1952 B. purchased No. 44 Mahlon Avenue in fee simple and also became registered proprietor with an absolute freehold title. Both a plan on a conveyance referred to in the transfer to B. and the Land Registry plan showed the boundary with No. 42 (described as north-western in the W.L.R. and northern in the All E.R.) as running obliquely to the road, so as to make the plot a few feet wider at the rear. The conveyance plan but not the Land Registry plan showed this boundary as the middle of a hedge, which was however removed during events leading to a boundary dispute between B. and his neighbour D. at No. 42. This dispute was eventually resolved in the county court, where an order was made for rectification of the register (L. R. A., s. 82 (1)) by drawing the boundary at right angles to the road, with the result that a narrow triangular strip of land was removed from B.'s registered title. B.'s claim for indemnity was referred to the court under Land Registration Rule 298 (1) and (2) as a matter of " doubt difficulty dispute or complaint." Counsel representing the Attorney-General (who appears for the Land Registry in these cases) argued that D was at all relevant times in occupation of the lost strip, whereby his rights, whatever they were, constituted an overriding interest under section 70 (1) (*g*) of the Act—rights of a person in actual occupation or possession. If this were so it followed from *Re Chowood's Registered Land* [1933] Ch. 574 that B. could not claim indemnity.

Wilberforce J. first stated that *Re Chowood* was applicable only if rectification gave effect to overriding interests and then held (1) without giving reasons, that the relevant date for considering actual occupation was that of registration of B's title; (2) that D. was then in occupation of part only of the lost strip, so (3) B. was entitled to partial indemnity.

This decision may be said, with respect, to leave some doubts and difficulties unresolved. Clearly the relevant date for rectification must be the initiation of proceedings or perhaps in some cases that of the hearing; the court must be satisfied that the order for rectification gives

effect to existing rights. Likewise, it is submitted, the question whether loss has been suffered must be determined as at the same date. Any other rule could lead to the curious result of a registered proprietor obtaining payment of indemnity when rectification gave effect to interests he had himself created, or allowed to be created—as, for instance, by permitting someone to acquire adverse possession and complete the period required by the Limitation Act, 1939. The present decision does not go to such lengths. It says rather, it is submitted, that the list of interests to be termed " overriding " is fixed, as regards any particular registered proprietor, at the date when he obtains title. Interests arising (or becoming protected by occupation or possession) during the period of estate ownership of a registered proprietor can be overriding *qua* any transferee, but not *qua* the existing registered proprietor. In other words, the principle of *Re Chowood, supra,* can be invoked only as regards interests in existence on the acquisition of registered title. In other cases the absence of loss must be proved in different ways. For example, a registered proprietor becomes trustee for someone who acquires title against him by adverse possession (L. R. A., s. 75); it is surely simple to say that rectification to give effect to this position causes no loss, without any reference to overriding.

It is also interesting to note that apparently the claim to indemnity was not resisted on the ground that the boundaries on the Land Registry plan were general only (L. R. A., s. 78); and see *Lee* v. *Borrey* [1957] Ch. 251.

Re Stirrup's Contract [1961] 1 W.L.R. 449; [1961] 1 All E.R. 805 (Ch.D.)

Vendor and purchaser—title—assent under seal—whether effective as conveyance—Law of Property Act, 1925, *ss.* 4, 9, 51, 52, 63, 205.—This was a vendor and purchaser summons under the Law of Property Act, 1925, s. 49 (7), to determine the validity of a purported assent.

A testator who died in 1908 devised freehold property called " The Beehive " to his wife Jane for life, and thereafter to his daughter Hannah Evans absolutely. On January 1, 1926, the legal estate in fee simple vested in Jane under the transitional provisions of the 1925 legislation (Law of Property Act, 1925, s. 39, and Sched. 1, Part II, para. 6). Jane died in 1930 having appointed R. S. her executor. Consequently the legal estate in " The Beehive " vested in R. S., the settlement having come to an end on Jane's death (*Re Bridgett and Hayes Contract* [1928] Ch. 163). In the meantime Hannah Evans had died in 1925, having appointed R. S. and D. E. her executors and trustees. In 1932 R. S. conveyed the property to himself and D. E. as trustees, but as administration of Hannah's estate had not been completed it actually vested in them as personal representatives. R. S. died in 1943; D. E. died in 1957, having appointed the National Provincial Bank, Ltd., as his executor. The Bank thereby became executor by representation of Hannah Evans. In October 1958 the Bank, by a document under seal, as personal representatives of D. E.,

deceased, assented to the vesting of the property in R. J., whose successor in title, J. H. S., contracted in 1959 to sell to a purchaser. It was common ground between the parties that the Bank could not assent under the Administration of Estates Act, 1925, s. 36 (1), because that subsection authorises a personal representative to assent only in respect of property "to which the testator or intestate was entitled . . . and which devolved on the personal representative." Here the property had been conveyed to Hannah's personal representatives, and was therefore never within the statute. Wilberforce J. was nevertheless able to hold that the vendor had shown a good title. He relied first on the general rules for the construction of deeds, whereby effect is to be given to the intention of the parties, if clearly expressed, even if inaccurate technical words are used, citing from the judgments in *Cholmondeley* (*Marquis*) v. *Lord Clinton* (1820) 2 Jac. & W.I. 91 and *Edwards* v. *Bailey* (1777) 2 Cowp. 597. Consequently the use of the word "assent" instead of "convey" or "grant" was not fatal. This reasoning, of course, will not extend to those cases, now few in number, where the law does require the use of particular words to achieve a particular result. Thus no one would doubt that the words "in fee" considered in *Re Ethel and Mitchell and Butlers Contract* [1901] 1 Ch. 945 were intended to pass a fee simple, yet at that time they were ineffectual in law so to do (see, generally, Halsbury's *Laws of England*, 3rd ed., Vol. II, at p. 343).

The learned judge was able also to rest his conclusion on the statutory provisions of the Law of Property Act, 1925. That Act requires the transfer of a legal estate in fee simple to be made by deed (ss. 51 (1), 52 (1)) but does not require the use of any particular word (s. 52 (2)); section 63, implying an "all estate" clause, states that every conveyance is effective to pass all the estate a party has which is intended to be conveyed; and by section 205 (1) (ii) "conveyance" includes an assent. Wilberforce J. therefore held that "provided the sole formal requirement of being under seal is complied with, any document, since 1925, at any rate, is effective to pass a legal estate, provided the intention so to pass it can be ascertained." ([1961] 1 W.L.R. at p. 454; [1961] 1 All E.R. at p. 809.)

Common sense and legal reasoning alike commend this solution to a technical question of title. The learned judge further held that the vendor's title was sufficiently good to be forced on the purchaser—that the vendor was in a position "without possibility of dispute or litigation" to pass the fee simple.

Savage v. *Uwechia* [1961] 1 W.L.R. 455; [1961] 1 All E.R. 830 (J.C.P.C.)

Sale of land—whether contract—construction—specific performance.—The Judicial Committee of the Privy Council (Lord Tucker, Lord Hodson and the Rt. Hon. L. M. D. de Silva) had here to construe an alleged agreement for the sale of land. R in 1954 signed a document headed "Promissory Note" and "£780" which stated "I promise to pay to M. U. or order three months after date the sum of

seven hundred and eighty pounds or in default to convey to him all those messuages together with appurtenances thereto situate at No. 6 New Market Road . . . Onitsha . . . in fee simple." M. U. now sought from R's personal representatives a decree for specific performance—that is, transfer of the property.

The Judicial Committee in a judgment delivered by Lord Hodson held (distinguishing *Tapply* v. *Sheather*, 7 L.T.(N.S.) 298) that this document could not be construed as a contract for the sale of land because, first, no price was stated so the contract was indefinite and, second, "value received" might well be past consideration. The Committee also held that, had an agreement been proved, there was not sufficient evidence on which the court could decide to give the discretionary remedy of specific performance.

Ching Garage, Ltd. v. *Chingford Corporation* [1960] 1 W.L.R. 947; [1960] 3 All E.R. 79 (C.A.); [1961] 1 W.L.R. 470; [1961] 1 All E.R. 671 (H.L.)

Access to highway—obstruction by street refuge—whether statutory power to erect—Highways Act, 1959; *Town and Country Planning Act*, 1947.—The decision of Lord Parker C.J., noted *ante*, Vol. 23, at p. 476, has been reversed by the Court of Appeal, whose decision has been affirmed by the House of Lords. The decisions on appeal in effect constitute a fresh case, because the statutes which Lord Parker had to consider have been repealed and replaced by the Highways Act, 1959. The short point was whether the Chingford Corporation, as highway authority, was entitled to place a "street refuge" on an "access slope" leading to the appellant's garage, and, if so, whether compensation was payable. This slope was part of the highway (not of the plaintiff's land, as was, unfortunately, erroneously stated in the earlier note) but had been constructed by the appellants under the Public Health Acts Amendment Act, 1907.

Lord Parker C.J. found for the appellants on the ground that neither the Public Health Act, 1875, s. 149, nor the Road Traffic Act, 1956, s. 45, authorised the construction. These two sections have, however, been replaced by sections 67 and 68 of the Highways Act, 1959. On amended pleadings the Court of Appeal (Sellers, Pearce and Devlin L.JJ.) and the House of Lords (Viscount Simonds, Lord Radcliffe, Lord Denning, Lord Morris of Borth-y-Gest and Lord Guest) unanimously held the construction authorised by section 67 (2) of the Highways Act, 1959, whereby compensation was payable under section 67 (6). The courts said that section 67 (1), requiring maintenance of a proper footway beside a made-up carriageway if needed for safety, did not confer powers adverse to existing private rights, and so the Act did not need to provide for compensation in relation to that subsection. On the other hand, they thought that section 67 (2), giving the highway authority power to "provide and maintain in a highway maintainable at the public expense by them, being a highway which consists of or comprises a carriageway, such raised paving, pillars, walls, rails or fences as they think necessary for the purpose

of safeguarding persons using the highway," necessarily contemplated interference with private rights and compensation under section 67 (6).

Lords Radcliffe, Morris and Guest also held that the Town Planning Act, 1947, s. 12 (2), (6), exempted the highway authority from the requirement of planning permission, so the authority had no need to rely on section 26 of that Act.

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2. *TRUSTS*

Moy v. *Moy and White* [1961] 1 W.L.R. 552; [1961] 2 All E.R. 204 (C.A.)

Husband and wife — settlement of wife's property on decree of divorce—Matrimonial Causes Act, 1950, *s.* 24.—The Court of Appeal (Holroyd Pearce, Harman and Davies L.JJ.) here accepted the principles laid down in *March* v. *March and Palumbo* (1867) L.R. 1 P. & D. 437 for exercise of the discretionary jurisdiction under (now) the Matrimonial Causes Act, 1950, s. 24, to order a settlement, by a wife guilty of adultery, desertion or cruelty, on the innocent party or children. The judgments are consequently concerned primarily with the facts. The principle is, in effect, that the standard of life of the innocent parties should not be substantially lowered by the act of the guilty party. Here the Court of Appeal regarded the wife's total fortune of £32,000 as primarily relevant, rather than her actual contribution of some £150 p.a. to the matrimonial expenses. Consequently she was ordered to settle £8,000 on discretionary trusts for the son of the marriage and the husband. The court also amended the proposed trust so as to prevent the husband acquiring capital.

Re Collard's Will Trusts [1961] 1 W.L.R. 415; [1961] 1 All E.R. 821 (Ch.D.)

Trusts—power of advancement—whether power to advance land—purpose of advancement—Trustee Act, 1925, *s.* 32.—Trustees for sale under a will held a mixed fund of lands and money on protective trusts for a mother (daughter of the testator) during her life and subject thereto for her children absolutely. The will also gave expressly to the trustees the statutory power of advancement under section 32 of the Trustee Act, 1925, subject to the restriction (validated by section 69 (2) of the Act) that no advancement should be made for the purpose of a beneficiary's business. The mother, aged 60, was past the age of child-bearing (compare *Re Burney's Settlement Trusts*, *infra*) and had one son who was agricultural tenant of, and ran as his business, a farm forming part of the trust fund and valued at £20,000. The trustees asked whether they could advance the farm to the son, the expressed object being the reduction of prospective estate duty on the mother's death.

Buckley J. held (1) a court of equity will never insist on circuity of action, referring to *Sprange* v. *Lee* [1908] 1 Ch. 424, and therefore, though section 32 is in terms a power to advance capital moneys,

i.e., cash, the trustees could advance land, because the alternative was to advance cash and then sell the farm to the son for the cash so advanced; (2) the purpose of the transaction could on the facts be held to be the saving of estate duty, especially as the son, *qua* farmer, was really better off as a protected agricultural tenant than a freeholder.

On both points the decision may be welcomed as a guide to trustees. Had the second point been decided in the contrary sense an application could, presumably, have been made under the Variation of Trusts Act, 1958. Then the court would have had to decide whether the whole scheme of the will (see *Re Steed's Will Trusts* [1960] Ch. 407 and *Re Burney's Settlement Trusts, infra*) permitted deletion of the restriction on use of the capital for business.

Re Hain's Settlement [1961] 1 W.L.R. 440; [1961] 1 All E.R. 848 (C.A.)

Trusts and powers—certainty of objects—trusts—date of ascertainment of certainty.—The Court of Appeal (Lord Evershed M.R., Upjohn and Pearson L.JJ.) here considered the distinction between trusts and powers, as regards certainty of objects, laid down in *Re Gestetner's Settlement* [1953] Ch. 672 and *I. R. C.* v. *Broadway Cottages Trust* [1955] Ch. 20 and since applied in several cases. The court then held valid a trust in favour of (*inter alia*) "past, present and future employees" of the settlor, holding that the relevant date for determining certainty was that of the settlement. Lord Evershed M.R. added that the court would be reluctant to hold trusts invalid for uncertainty in this type of case.

Re Christie-Miller's Settlement [1961] 1 W.L.R. 462; [1961] 1 All E.R. 855 (Ch.D.)

Variation of trusts—parties—persons interested only under power of appointment — Variation of Trusts Act, 1958.—By a marriage settlement the husband's fund was settled, in default of issue, on such of the husband's brothers and sisters and their issue as he should appoint, and in default in trust for brothers and sisters (but not for their issue) in equal shares. The question before the court was whether the issue of brothers and sisters should be joined in an application under the Variation of Trusts Act, 1958, to vary an investment clause. Wilberforce J. said: "The proceedings have been properly constituted without joining the issue of the brothers and sisters. The appointor is a party to the application and he is at liberty to release his power of appointment, if he sees fit, and thereby extinguish the possible interests of such issue" ([1961] 1 W.L.R. at p. 463; [1961] 1 All E.R. at p. 856). The learned judge then declined to decide whether mere concurrence in the application amounted to a release, because by consent a recital of release, so far as necessary to bind any appointees, was to be included in the order.

In this context the quoted sentences do not, it is submitted, make clear whether it is always unnecessary to join mere potential appointees, or whether this is so only if the power is released as in the present case. It will be seen that in *Re Burney's Settlement,* noted *infra,* such potential appointees were joined.

Re Burney's Settlement Trusts [1961] 2 W.L.R. 545; [1961] 1 All E.R. 856 (Ch.D.)

Variation of trusts — protected life interest — enlargement to absolute life interest — factors to be considered in exercising court's discretion—Variation of Trusts Act, 1958.—By a marriage settlement made in 1957 funds provided by the wife were settled on her for life, subject thereto on the husband on protective trusts for life, and subject thereto for the children or remoter issue of the marriage as the wife should appoint and in default of appointment for the children of the marriage equally on attaining twenty-one or if female on marriage. The settlement contained a power of advancement and a power for the wife to appoint interests to any subsequent husband, or issue of a subsequent marriage. Both wife and husband were living and had two married daughters of full age. Apart from extension of the investment clause (which caused no difficulty) the application under the Variation of Trusts Act, 1958, sought merely to convert the husband's protected life interest into an absolute life interest. The effect of this would of course be to give to the wife, husband and the two daughters between them complete control of the trust funds. There was no present proposal to release a life interest.

It will be recalled that in *Re Steed's Will Trusts* [1960] Ch. 407 (noted *ante,* Vol. 24, at p. 242 and, in the court of first instance, Vol. 23, at p. 221) the Court of Appeal, affirming Harman J., declined to approve destruction of a protective trust where this would have given a spinster beneficiary an absolute interest, declaring that the scheme as a whole, including the intention of the settlor, must be considered.

In the instant case Wilberforce J. first pointed out that the wife was past the age of childbearing (she was 60) so the possibility of any further children being borne by her could be disregarded. This recognition of the physical situation is to be welcomed, and contrasted with the contrary hypothesis which has unfortunately to be assumed in cases involving the Rule against Perpetuities. Then, after referring to, and of course accepting the principle laid down in, *Re Steed, supra,* the learned judge set out in a reserved judgment the factors he considered to be relevant to the decision to approve or reject the application. These were (1) improvement in the husband's circumstances since 1927 and the then lack of appreciation by settlors and their advisers of the advantages of trust breaking; (2) the settlor's intention (stated by affidavit) not to provide for a second wife of the husband or his issue by such a wife but only to protect her own family; (3) the chances of release of the husband's life interest in favour of issue of the marriage, these being, if anything, better than the chances of a forfeiture; and (4) the wife's willingness to release her power to

appoint to a subsequent husband, which was a definite benefit to the issue of the marriage. Taking all these matters into account—and declining to say whether the absence of any one, particularly element (4), would have affected the decision—Wilberforce J. approved the arrangement on behalf of the infant children of one of the daughters, all persons as yet unascertained, and all persons who would be objects of the discretionary trust.

This decision will therefore give useful guidance to practitioners who have to advise clients or prepare applications under the Variation of Trusts Act, 1958.

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3. *WILLS*

By A. Kiralfy, Barrister-at-Law

Re Manifold, Slater v. *Chryssofinis* [1961] 2 W.L.R. 456; [1961] 1 All E.R. 710

Conflict of laws—Lord Kingsdown's Act, 1861, *and general rules of succession.*—A new point had here to be directly decided, although there was some indirect guidance. Under the general principles of Conflict of Laws the validity and operation of wills of personalty are both governed by the law of the domicile. The Act of 1861 introduced a number of special rules of Form of Wills for British subjects which inevitably caused a divergence from the general rule. It was clear that a will might be formally valid and well executed under the Act even though it did not satisfy the formal requirements of execution by the *lex domicilii.* Hence it might confer rights which differed from those of that law. What was to happen if a man died domiciled abroad but leaving assets in England and his will was effective by English law but not by the domiciliary law? Buckley J. held that the Act must be given full effect and English assets distributed among the legatees under the Kingsdown will rather than those entitled in the eyes of the courts of the country of domicile. In the instant case the will was executed according to the law of the domicile of origin, England. It was valid by our law but not initialled on every page as required by the law of Cyprus, the testator's last domicile. The learned judge pointed out that the decisions about transferring assets to the main country of administration, the *forum domicilii,* were permissive and not mandatory. He predicted that the courts of Cyprus might react to his decision, and require the assets distributed here to be brought into account if assets situated in Cyprus were also claimed by the legatees. *Re Grassi* [1905] 1 Ch. 584 and *Re Lorillard* [1922] 2 Ch. 638 were referred to. The statement in Tristram & Coote, 21st ed., p. 84, was not adopted.

(Theobald 6)

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4. *LANDLORD AND TENANT CASES*

By D. Macintyre, m.a., Barrister-at-Law

Thomas v. *National Farmers' Union Mutual Insurance Society, Ltd.*
[1961] 1 W.L.R. 386; [1961] 1 All E.R. 363 (Q.B.D.)

Agricultural Holdings Act, 1948—*notice to quit—hay and straw left on holding by outgoing tenant—moment at which property passes to landlord.*—Section 12 (1) of the Agricultural Holdings Act, 1948, provides that " where notice to terminate the tenancy of an agricultural holding is given either by the tenant or by the landlord, the tenant shall not, subject to any agreement in writing to the contrary, at any time after the date of the notice sell or remove from the holding any manure or compost or any hay or straw or roots grown in the last year of the tenancy unless before the sale or removal the landlord has consented thereto in writing." Other sections of the Act give an agricultural tenant the right to claim compensation in respect of crops left behind under section 12 (1). Diplock J. held in this case that the property in a quantity of hay and straw left on the premises by an outgoing tenant passed to the landlord as soon as the tenant had quit the holding on the termination of the tenancy, so that the tenant no longer had any insurable interest therein. He rejected an argument that the property does not pass in such cases until the compensation has been fixed. The property passes by operation of law despite the fact that a landlord is expressly entitled to consent in writing to the removal of the produce mentioned in section 12 (1), should the parties reach a contrary agreement.

Westerbury Property and Investment Co., Ltd. v. *Carpenter*
[1961] 1 W.L.R. 272; [1961] 1 All E.R. 481 (Ch.D.)

Landlord and Tenant Act, 1954—*business premises—sub-tenancy —notice to terminate head tenancy—application for new tenancy by head tenants — sub-tenant holding over as yearly tenant — notice to terminate sub-tenancy served by head landlord — validity of notice — whether head landlord " competent landlord."*—Predecessors in title of the plaintiffs in this case granted a lease of certain business premises to head tenants for fourteen years from March 25, 1946. The head tenants granted a sub-lease of part of the premises to the defendant for three years from March 25, 1948; but at the end of that period (*i.e.*, from March 25, 1951) the defendant continued to occupy her part of the premises as a tenant from year to year. In August 1959 the plaintiffs served a notice on the head tenants under section 25 of the Landlord and Tenant Act, 1954, terminating the head tenancy on March 25, 1960. Then on January 22, 1960, the plaintiffs served a similar notice on the defendant, which purported to terminate her sub-tenancy on July 31, 1960. Counsel for the defendant argued (1) that the defendant was entitled to a notice which expired not earlier than March 25, 1961, and (2) that the plaintiffs did not, at the time when

they served the notice, fall within the definition of "the landlord" contained in section 44 (1) of the Act. Danckwerts J. rejected the first contention. Section 25 (3) (*a*) of the Act (which provides that the date of termination of a tenancy shall not be earlier than the earliest date on which apart from the Act the tenancy could have been brought to an end by notice to quit) did not, in his view, apply to this case, because on the date when the plaintiffs' notice was given (January 22, 1960) the head tenants could not have given notice to quit to the defendant, since their own tenancy was coming to an end on March 25, 1960, and by virtue of that the defendant's sub-tenancy would also come to an end apart from the provisions of the Act. Consequently section 25 (4) of the Act (which provides that in the case of any other tenancy the date of termination shall not be earlier than the date upon which apart from the Act the tenancy would have come to an end by effluxion of time) applied; and the date upon which the sub-tenancy would have come to an end by effluxion of time was March 25, 1960. But the learned judge agreed with counsel for the defendant on the second point. A tenant whose tenancy is continued by the Act of 1954 can be "the landlord" within the meaning of section 44 (1) of the Act (see *Cornish* v. *Brook Green Laundry* [1959] 1 Q.B. 394, 410); and notice to quit as defined by section 69 (1) does not, in the view of the learned judge, include a statutory notice to terminate a tenancy under section 25. Accordingly the head tenants, who had applied for a new tenancy, were on January 22, 1960, the holders of "a tenancy which will not come to an end within fourteen months or less by effluxion of time or by virtue of a notice to quit already given by the landlord" (see s. 44 (1)). The plaintiffs did not become "the landlord" of the sub-tenant until the head tenants withdrew their application for a new tenancy just one week later.

A. D. Wimbush & Son, Ltd. v. *Franmills Properties, Ltd.*
[1961] 2 W.L.R. 498; [1961] 2 All E.R. 197 (Ch.D.)

Landlord and Tenant Act, 1954 — *business premises — notice to terminate tenancy containing notice of opposition to new tenancy — change of landlord after service of notice but before hearing—whether new landlord can rely on notice of opposition.*—In July 1958 Franmills Properties, Ltd., who were at that time landlords of the applicants, A. D. Wimbush & Son, Ltd., served on the applicants a notice under section 25 (1) of the Landlord and Tenant Act, 1954, to terminate a tenancy of certain business premises on June 30, 1959, the date upon which the tenancy was due to expire by effluxion of time. Paragraph 3 of this notice read as follows: "I would oppose an application to the court under Part II of the Act for the grant of a new tenancy on the ground that on the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein." The applicants applied for a new tenancy. The question was whether Mills & Mills, Ltd., who had become landlords of the applicants on June 24, 1959, by virtue of a lease granted to them by

Franmills Properties, Ltd., in 1952, were entitled to oppose the application for a new tenancy on the ground set out in the notice served by Franmills Properties, Ltd., in 1958. Plowman J. held that they were so entitled on two separate grounds. He held, first, that as a matter of construction the word "landlord" in paragraph 3 of the notice could only mean the landlord who is entitled to defeat the applicant's claim to a new tenancy by establishing that he intends to occupy the premises for the purposes of his own business (*i.e.*, the "landlord" within the meaning of section 44 (1) at the date of the hearing: see *Betty's Cafés, Ltd.* v. *Phillips Furnishing Stores, Ltd.* [1959] A.C. 20). It was not necessarily confined to the landlord described as "I" who actually served the notice. Secondly, he held that, even if he was wrong on the first point, section 30 of the Act only requires that a landlord opposing an application under section 30 (1) (*g*) should have the intention set out in that paragraph and that the notice under section 25 should contain a sufficient reference to the paragraph upon which the landlord relies. It does not require that the same person should remain landlord throughout the proceedings.

Barclays Bank, Ltd. v. *Ascott* [1961] 1 W.L.R. 717; [1961] 1 All E.R. 782 (Q.B.D.)

Landlord and Tenant Act, 1954 — *business premises — notice to terminate tenancy — statement that landlords would not oppose an application for a new tenancy provided that a guarantor was obtained —validity of notice.*—In a notice to terminate a tenancy of business premises served under section 25 of the Landlord and Tenant Act, 1954, the landlords stated that they would not oppose an application to the court for a new tenancy "provided Mr. George Ascott . . . or some other person approved by us is a guarantor for payment of the rent and observance of the covenants or agreements to be performed or observed by you in relation to such new tenancy. . . ." Barry J. held that the notice was invalid. This notice could only mean that the landlords would oppose an application to the court, if a suitable guarantor were not found. Consequently the tenant had not been given such information as would enable her to deal in a proper way with the situation referred to in the notice (see judgment of Hodson L.J. in *Bolton's (House Furnishers), Ltd.* v. *Oppenheim* [1959] 1 W.L.R. 913; [1959] 3 All E.R. 90). The learned judge rejected a submission of the landlords that if the tenant had studied the Act or the notes on the back of the notice, she would have appreciated that the landlords by failing to state one of the grounds of opposition set out in section 30 of the Act had put themselves in the position of agreeing to or not opposing an application to the court. Even though the landlords had meant that they were not going to oppose, but were merely going to insist as far as possible on the provision of a guarantor, they had not in fact said that.

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5. *REVENUE CASES*

By David R. Stanford, m.a., ll.b., Barrister-at-Law

(*Note*: Where a case is not reported in any of the general series of law reports it is cited from *Taxation Reports* (T.R.).)

Inland Revenue Commissioners v. *Lithgows, Ltd.*
(1960) T.R. 363 (Ct. of S.)

Income Tax—Sales between associated companies—Control

Statutory Provisions: Income Tax Act, 1952, ss. 333 (1) and 469.

Point: Under the Income Tax Act, 1952, s. 469, where sales take place between two companies and one has control over the other or some other person has control over both of them and the price at which the property is sold is greater or less than it might have been if the parties had been independent persons dealing at arm's length, then the Commissioners of Inland Revenue have power to direct that for certain purposes the sale must be deemed to have taken place at the market price. If the sale is at less than the market price, then the market price is written into the seller's accounts unless the buyer is trading in the relevant property so that the low sale price would be written into its accounts. In order to determine whether there is the relevant degree of control, the definition of control in section 333 (1) of that Act is incorporated. By that definition, control means "the power of a person to secure by means of the holding of shares or the possession of voting power . . . or by virtue of any powers conferred by the articles of association . . . that the affairs" of the company "are conducted in accordance with the wishes of that person."

Such definition of control is restrictive of the meaning of control if standing on its own and undefined. In particular, that the affairs must be conducted in accordance with the wishes of a person indicates that such person must be in a position to enforce his personal desires on the company. If his holding of shares is a joint one, so that he cannot exercise his voting power merely in order to bring about his personal desires but must join with his co-holders, such voting power is not sufficient to give him the relevant type of control.

Facts and decision: The first company sold a ship to a second company at a figure less than the market price and the second company was not trading in the buying and selling of ships. At the date of the sale the majority of the voting power in each company was vested in trustees and the first-named trustee in the case of each company was the same person. Nevertheless, in the case of the first company, the first-named trustee was one of four holding the shares on the trusts of a settlement for a particular set of beneficiaries, but as first-named trustee in the case of the second company he was one of three trustees holding the shares upon the trusts of a different settlement. The Commissioners directed that section 469 (1) should apply in relation to the sale of the ship, so that the full market value of the ship should be written in as a receipt by the first company.

Held: No person had control over both the companies. The first-named trustee whose votes must admittedly have been accepted in the

case of each company in respect of the majority of shares, held such shares in the capacity of trustee. In such capacity it was his duty to act collectively with his other trustees and if he attempted in defiance of his co-trustees to impose his personal wishes in the administration of either company's affairs, he could have been restrained from so doing by his co-trustees.

The type of control which is envisaged for the purpose of section 469 is the ability to ensure that the person in control will be obeyed and continue to be obeyed in the company and not merely a power on any particular question to carry the matter by a vote at a single meeting.

It should be noted that this case does not affect the decisions as to the meaning of a controlling interest for certain purposes of profits tax or control for the purposes of estate duty. The interpretation of the meaning of control is purely an interpretation of the definition in section 333. However, it may be noted that this definition is widely used and in particular governs the meaning of control for the purposes of Finance Act, 1960, s. 43. The prima facie wide provisions of the Finance Act, 1960, are thus further narrowed, giving, perhaps, a further object lesson in the dangers of over-precise definition.

Tollemache Settled Estates v. *Coughtrie* [1961] 2 W.L.R. 318; [1961] 1 All E.R. 593; [1961] T.R. 1 (H.L.)

Income Tax—Excess Rents—Computation

Statutory provisions: Income Tax Act, 1952, ss. 82, 175 (1) (*a*) and Sched. A, para. 2.

Point: The House of Lords have now upheld the decision of the Court of Appeal (see Vol. 25, *ante*, pp. 86 and 87). Their Lordships adverted to the anomalous result of construing section 175 as directed solely to the rent for a particular year in the case of a lease at a rising rent and a lease at a premium, but did not consider that such anomalies were sufficient to alter the construction of the section. Thus, for the purposes of section 175 an individual calculation of an annual value based solely on the yearly rent for the particular year must be made and no fresh notional Schedule A assessment by reference to all the terms of the lease and the rents payable over the whole of the term.

Butler v. *Butler* [1961] 2 W.L.R. 397; [1961] T.R. 19 (C.A.)

Income Tax—Annual Payments less tax—Amount of Payments

Statutory provisions: Income Tax Act, 1952, s. 169.

Point: Where annual payments are made, tax falls to be deducted under the Income Tax Act, 1952, s. 169 (or alternatively under section 170 if paid out of untaxed profits), and the payee is bound to allow deduction of the tax, nevertheless crediting the payer with payment of the full amount. If a maintenance order is made for payments of an

annual sum less tax, then the liability of the payer is to pay the gross sum less tax to the payee and account for the balance to the Revenue. As the recipient has therefore no right to receive a greater sum than the gross sum less tax, liability to pay away the amount of the sum received may be restricted to the net sum rather than the gross sum.

Facts and decision: Proceedings between a husband and wife were stayed on terms that the wife should buy a house from the husband paying instalments not exceeding " such amount as may be agreed or awarded " to the wife " by way of alimony and/or maintenance." The wife subsequently obtained an order for maintenance at the rate of " £200 a year less tax." The husband supplied the wife with tax deduction certificates in each year for £85, namely tax at the standard rate on £200, and credited her with the balance of £115 in each year against the debt. The wife contended that her debt was being reduced at the rate of £200 per annum and not at the rate of £115 per annum.

Held: The Master's order incorporating the parties' terms in referring to " the amount awarded to the wife " meant the amount which the husband would be liable to pay in cash each year to the wife and that sum was £115 and not £200. Accordingly, the wife could set off against her debt only a sum of £115 in each year and not £200.

The result was clearly in accordance with the intention of the parties, for the wife on receiving the tax deduction certificate was in fact able to obtain repayments of the tax (her total income being sufficiently low) which repayments she retained. Had she been entitled to set off the whole £200 against her debt she would have received payment from her husband of an amount in excess of the £200 which she had been awarded by way of maintenance.

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6. *PLANNING CASES*

By V. G. Wellings, M.A.(Oxon), Barrister-at-Law

Fawcett Properties v. *Buckingham County Council*
[1960] 3 W.L.R. 831; [1960] 3 All E.R. 503 (H.L.)

Permission subject to condition — relation of condition to local planning considerations — certainty.—The decision of the Court of Appeal (23 *Conveyancer* 485) was affirmed. In 1952 the council granted permission under section 14 of the Act of 1947 for development of land at Chalfont St. Giles by building thereon a pair of semi-detached cottages. The permission was subject to a condition that " the occupation of the houses shall be limited to persons whose employment or latest employment is or was employment in agriculture as defined by section 119 (1) of the Town and Country Planning Act, 1947, or in forestry, or in an industry mainly dependent upon agriculture and including also the dependants of such persons as aforesaid." The wording of the condition was adapted from section 115 (2) of the Housing Act, 1936 (a provision dealing with contributions by county councils towards housing expenses in rural districts). The permission stated that the reason for imposing the condition was " because the

council would not be prepared to permit the erection of dwelling-houses on this site unconnected with the use of the adjoining land for agricultural or similar purposes." The permission was registered as a local land charge. Chalfont St. Giles was within the metropolitan green belt but no development plan was yet in operation although one was being prepared, so that section 36 of the Act applied.

It was held by the House of Lords as follows:

(1) The imposition of a condition restricting the use of the premises by reference to the personal circumstances of the occupants was not *ultra vires* the council if the condition had some conceivable relevance to planning policy.

(2) The condition was not so wide that in the result it could not fairly and reasonably be said to relate to the permitted development or to any policy possible under the Act of 1947 and, accordingly, was not *ultra vires* on that ground.

Dicta of Lord Denning in *Pyx Granite Co.* v. *Ministry of Housing and Local Government* [1958] 1 Q.B. 554; 23 *Conveyancer* 485, 486 applied.

(3) The condition was not restricted to the prior occupation of the cottages.

(4) (Lord Morton of Henryton dissenting) the condition was not void for uncertainty.

Buxton v. *Minister of Housing and Local Government*
[1960] 3 W.L.R. 866; [1960] 3 All E.R. 408 (Q.B.D.)

Application by adjacent landowner to set aside Minister's decision on planning appeal—"person aggrieved."—An appeal by a company against the refusal by the local planning authority of permission to develop land was allowed by the Minister against the opinion of his inspector. Owners of adjacent land sought an order under section 31 (1) of the Town and Country Planning Act, 1959, to quash the Minister's decision on the grounds that they were aggrieved persons whose lands would be injured by the proposed development. Salmon J. held that the expression "person aggrieved" in a statute meant a person who had suffered an injury to a legal right; that, whilst there was much to be said for the view that the applicants were aggrieved by the decision in the sense that the proposed development would spoil their amenities and diminish the value of their lands, they had suffered no injury to any legal right and, accordingly, were not "persons aggrieved." This case is discussed in an article in [1960] J.P.L. 702 *et seq.* See also the recent article and discussion in *The Times* (on the decision of the Lord Chamberlain under the Tribunals and Inquiries Act, 1958).

THE LIBRARY

Woodfall's Law of Landlord and Tenant. Twenty-sixth edition. By Lionel A. Blundell, q.c., ll.m., and V. G. Wellings, m.a., Barrister-at-Law. Sweet & Maxwell, Ltd. 1960. 2 volumes. clxxxvii and 2069 pp. (£12 12s.).

A new edition of *Woodfall*, six years after the last, this time in a two volume format, is an event of much interest to the legal profession. The first edition of this great classic on the law of landlord and tenant was published in 1802. Its author, William Woodfall, was appointed Chief Justice of Cape Breton, Nova Scotia, in 1804 and died in 1806, probably at the early age of 33. The brief career which ended with his untimely death 154 years ago has been followed by literary immortality, although there is little left in the present work which is traceable to his pen. The editorship of the first five editions after his death is in some doubt, but since then ten known editors of distinction, including Mr. Blundell and Mr. Wellings, have been responsible for twenty-seven editions. The reason why the present edition is described as the twenty-sixth, and not, as the alert reader of the above would have expected, the thirty-third, is that after the first seven editions the book was remodelled by S. B. Harrison and his remodelled edition was designated as the first of the new series. Among the well-known editors of subsequent editions have been J. M. Lely, W. Hanbury Aggs and Aubrey J. Spencer, all three of whom were also authorities in the more specialised field of agricultural holdings. The two present editors are not the least distinguished of this succession of learned men who have deserved well of the legal profession. The standard of *Woodfall* has been, and remains, high. It is one of the most important legal works in the English language. Apart from the excellence of its monumental learning, it has qualities of readability, unity and continuity which are quite remarkable in a book which has passed through so many editions. There are other good books on landlord and tenant, but *Woodfall* has a flavour of its own.

The new two-volume arrangement is convenient. Statutes, statutory instruments, official and unofficial forms have been relegated to volume 2. Volume 1 contains the systematic exposition of the law. This runs to over 1,500 pages of main text, but, as a result of the thin paper used, it is not unduly bulky. A feature of this edition is that there are separate chapters on the Rent Acts, Agricultural Tenancies and Business Tenancies instead of the previous arrangement under which the Rent Acts were dealt with largely under "Rent" and agricultural holdings and business tenancies largely under "Rights and Liabilities on Termination of Tenancy." This is an improvement from the practitioner's point of view.

The structure of the general chapters is unchanged and here one can say little more than that such new law as there has been has been most carefully and skilfully woven into the old. One point troubled the reviewer in the discussion of lease and licence on pp. 7–14. If exclusive possession is not a universal test of the distinction, what becomes of the definition of a lease on p. 2. Leases of incorporeal hereditaments, such as the franchise of a market, are dealt with on p. 21. A question which is giving rise to some difficulties today is the position in regard to leases, not of the franchise of markets, but of specific portions of market premises owned by a local authority, where the tenancy is discontinuous, but confers exclusive possession on, say, one day a week. Can the tenant claim security of tenure under Part II of the Landlord and

Tenant Act, 1954, for the one day a week? There seem to be some words missing on p. 102 under Scale 16 (*b*) of the Scales of Charges relating to the disposal of leasehold property. The Charities Act, 1960, became law after the book was in proof. The reader dealing with leases to or by charities will have to bear this in mind. It should, perhaps, have been made clear in a footnote to paragraph 2081 on p. 957 that some other textbooks take a different view as to the application of section 146 of the Law of Property Act, 1925, to contracts for leases. The reference in paragraph 2234 (p. 1026) to *Re Strand and Savoy Properties* [1960] 3 W.L.R. 1 is rather too brief to bring out the point that section 149 (3) of the 1925 Act is confined, so far as contracts are concerned, to contracts to create terms which, when created, will only take effect more than twenty-one years from the date of the instrument creating them. The impact of planning law on leases might now be the subject of a comprehensive paragraph; *Best* v. *Glanville* [1960] 3 All E.R. 470, was decided too late for inclusion, but illustrates the sort of problem which arises. Section 29 of the Town and Country Planning Act, 1959, might have been mentioned. Section 12 of the Clean Air Act, 1956, is referred to on p. 1148, but section 28 might also have been mentioned.

The chapter on agricultural tenancies gives a very good brief account of the law of agricultural holdings. It is necessarily succinct but all the main points are dealt with. The reference to *Burden* v. *Hannaford* [1956] 1 Q.B. 142, in paragraph 2577 (p. 1306) is a little too broad, "sound management" (paragraph 2600, p. 1319) does not attract the definition of "good estate management," and the unreported decision of Lynskey J. in *Scott* v. *Barnes*, mentioned in Scammell's *Law of Agricultural Holdings* (3rd edition) p. 422, is, if correct, contrary to the proposition stated in paragraph 2605 (p. 1322), based on *Sharpley* v. *Manby* [1942] 1 K.B. 217. It would be advisable to make it clear in paragraph 2606 (pp. 1322–1323) that an allotment *garden* cannot be an agricultural holding. Section 24 of the 1948 Act should now be printed without subsection (3); this is done correctly in volume 2, p. 1615, but not on p. 1315 of volume 1.

The chapter on Business Tenancies is, in this reviewer's opinion, particularly good. It is a most masterly statement of the law, and it reflects also the editors' unrivalled practical experience of the litigation which Part II of the 1954 Act has occasioned. There is, for example, a wealth of wise guidance on evidence in paragraph 2792 (pp. 1417–1420). It may be noted that the decision in *Wine Shippers* (*London*) v. *Bath House Syndicate*, mentioned in footnote 1 on p. 1421 has, after the book went to press, been reversed by the Court of Appeal [1960] 1 W.L.R. 989.

Altogether the editors have discharged their mammoth trust most admirably. The new edition is, of course, a "must" for the property lawyer's library.

J. M. W.

Hill and Redman's Law of Landlord and Tenant. Thirteenth edition. By W. J. Williams, B.A., and Miss M. M. Wells, M.A., Barristers-at-Law. Butterworth & Co. (Publishers) Ltd. 1960. ccxlv, 1424 pp. and (index) 64. (£8 8s. net.)

The editors of the thirteenth edition of *Hill and Redman*, Mr. W. J. Williams and Miss M. M. Wells, deserve the sincere thanks of the legal profession for the very high standard which they have maintained in bringing this important landlord and tenant textbook up to date. There is, as one would expect from these editors, evidence of careful scholarship and sound learning on every page. The general structure is unaltered in this edition, but the editors have managed (no mean feat) to save 109 pages, mainly by dropping the old Part IV (Emergency Legislation) and omitting the text of such statutes as the Landlord and Tenant (War Damage) Acts and the

Landlord and Tenant (Requisitioned Land) Acts. The editors recognise that these statutes are still in existence, and they are referred to in the text where relevant, but they are no longer printed *in extenso*. There is obviously a case for this treatment, although it may be noted that the statutes in question are still printed in the new *Woodfall*. New Acts which have had to be printed include the Rent Act, 1957, the Landlord and Tenant (Temporary Provisions) Act, 1958, the Agriculture Act, 1958, and the Landlord and Tenant (Furniture and Fittings) Act, 1959.

Mr. Williams and Miss Wells have not afforded even the most carping critic much opportunity for a display of virtuosity. The following few comments will, however, serve the double purpose of demonstrating that the reviewer has actually read the book and that he has found little of real substance to criticise.

Does not the subject of business tenancies now deserve a separate Part? They are at present dealt with in Chapter IX as a section of "Leases of Special Properties." Incidentally, footnote (a) on page 592 seems to be wrong in referring the reader to Part III. This subject occupies thirty-four pages in the new *Hill and Redman*, 110 in the new *Woodfall*, which suggests that the former's treatment of it might be made a little more generous. The reference in Note (d) on page 691 to the *Rose* v. *Hurst* doctrine applying only where a limited company is tenant seems to ignore the possibility of their being a non-corporate, non-resident tenant. The discussion of the rules as to good estate management and good husbandry on page 759 should perhaps make it clear, as the note on page 779 does, that the legal status of these rules has been modified since the disciplinary provisions of Part II of the Agriculture Act, 1947, were repealed. Note (h) at the foot of page 845 is a little misleading in saying that the actual claim for compensation need not be in writing; what about paragraph 6 of the Sixth Schedule to the 1948 Act? Section 85 of the 1948 Act, printed on page 883, should not include the words "and is not restrained from anticipation." These words were taken out by the Married Women (Restraint upon Anticipation) Act, 1949, section 1 and Schedule. The editors might have cited the unreported case of *Scott* v. *Barnes* (see Scammell's *Law of Agricultural Holdings* (3rd edition), p. 422) in support of their view on page 888 that it would be unwise to rely on *Sharpley* v. *Manby* for the purpose of section 92. The annotations to the Rent Acts in Part III are admirable, but one wonders how far this treatment by means of section by section annotation presents a clear picture of the law relating to rent restrictions today. True there is an Introduction to Part III, but this is intended only as a brief outline.

The final summing up must be—an excellent job; and the verdict—a copy must be obtained, preferably by legal means.

J. M. W.

Alpe's Law of Stamp Duties. 25th edition. By PETER E. WHITWORTH, B.A., Barrister-at-Law, and JAMES MACKENZIE, M.B.E. London: Jordan & Sons, Ltd. 1960. lxvii + 594 + (index) 68 pp. (£3 3s.)

The twenty-fifth edition of *Alpe* is appreciably fatter than its predecessor, though its preparation has been entrusted to the same team as the twenty-fourth. The increase in bulk is not wholly attributable to increased verbosity or even to new legislation as over seventy pages are taken up with a useful reprint of the judgments in a number of stamp duty cases not reported in the more familiar series of reports. Unlike those in the rival work (Sergeant on *Stamp Duties*) these reports do not include the stated cases; this omission has no doubt enabled a larger number of cases to be included, but it nevertheless reduces the value of the reports. For instance, it is impossible to

deduce any principle from the case of *Leigh Spinners, Ltd.* v. *I. R. C.* without a statement of the facts. No sufficient statement is to be found in the judgment or in the brief statement of facts preceding it on p. 569 of the book.

Although the book is crammed with useful information unobtainable from any other source its arrangement leaves something to be desired. The plan is to take the various appropriate headings and to expound in relation to each the relevant law setting out at the same time the relevant statutory enactments with the laudable object of enabling the reader to find collected together in one place all the material necessary for dealing with the problem before him. Thus for instance the subject "Conveyances" is dealt with from pp. 156 to 250, and in the course of those pages sections 54 to 62 of the Stamp Act, 1891, section 74 of the Finance (1909–10) Act, 1910, section 55 of the Finance Act, 1927, and section 42 of the Finance Act, 1930 (among other sections) are set out in full. Though this is highly convenient for making a study of conveyances on sale, it means that one cannot without recourse to the index turn up a particular section that one wants. It also frequently involves the editors in increasing the bulk of the book by printing a section more than once. Thus section 35 (1) of the Finance Act, 1958, is printed on p. 130 under the head "Bond, Covenant, &c.," and on p. 302 under the head "Mortgage, &c." Even then there are topics which from the sheer necessity of keeping the book within bounds the editors have not dealt with as a whole. Thus unit trusts, which are the subject of a private stamp duty code of their own contained in sections 53 to 57 of the Finance Act, 1946, are dealt with piecemeal and bits of these sections (some of them twice) are scattered over the book.

The bulk of the book is further increased by the treatment of certain topics outside its real scope. Thus, for instance, the fact that certain conveyances bear a reduced rate of duty if made to charities has resulted in a detailed, but not a comprehensive, consideration of the meaning of the words "charitable purposes" including a print in full of the Charitable Trusts (Validation) Act, 1954, and the Recreational Charities Act, 1958. This really might be eschewed in the interests of brevity in the next edition. A book on charities should merely mention that charities have certain stamp duty privileges without going into details of stamp duty law relating to conveyances. For the same reason a book on stamp duties should not be required to go into the law of charities.

These criticisms do not of course mean that the book is one to be dispensed with. On the contrary it is indispensable to all serious workers on the subject, if only because there is hardly a point of stamp duty law or practice that will not be found somewhere between its two covers.

J. G. M.

The Law of Stamp Duties. Third Edition. By J. G. Monroe, B.A., Barrister-at-Law. 1961. London: Sweet & Maxwell, Ltd. xxviii, 267 and (index) 30 pp. (£2 2s.)

When the *Conveyancer* first published a series of articles in narrative form on the law of stamp duties it thought it was doing a useful service, but it hardly thought it would become a popular work: the subject-matter is hardly exciting. The immediate and sustained popularity of Mr. Monroe's book is proof both of the original need for this treatment of the subject and of the author's ability of exposition. The four years since the second edition have seen an abnormal crop of stamp duty decisions and, accordingly, there is a number of amendments and the text has expanded, although the narrative is still well under 200 pages. The general scheme follows that of the previous editions, though a new chapter has been added on unit trusts. The principal

alteration is in the appendices. Although no doubt it is the best introductory book on the subject, equally it is quite certain that it is widely used by practitioners. Accordingly, we welcome the fifty odd pages of the principal statutory provisions on the subject. Over the years we have used the previous editions frequently and found the book reliable and helpful. It is growing and not just being added to. We have no doubt that we shall find the new edition even more useful.

E. F. G.

Christopher Palles. By V. T. H. Delaney. Dublin: Allen Figgis & Co., Ltd. 1960. 200 pp. (£1 1s.)

This book is published by a new Irish company which has as its policy the publication of works of interest to readers other than those whose especial interest is Ireland. Any attempt to broaden the output of literature is to be welcomed and if the standard of production of this book is anything to go by, Irish writers need have no fear of the adequacy of the vehicle to carry their goods. Ireland has produced so many flamboyant characters, particularly in the legal world, that the quiet scholarship, one might also say pedantry, of Palles is inclined to be overlooked. The trouble with perfectionists particularly on the bench is that the cost occasioned may finally result in injustice. The following passage to the author shows his hero's openness of mind, to the reviewer the appalling injustice that may flow from a disregard of the costs involved—"In a case which appears in the law reports, *Barrett* v. *Harold*, an action for assault was brought to vindicate a claim to be an *ex officio* Poor Law Guardian. The county court judge dismissed the action, and Palles affirmed the decision on appeal, but stated a case. He sat with another judge in a Divisional Court to try the case stated and adhered to his former opinions. His brother judge dissented and there was re-argument before Palles and two others. Palles delivered the unanimous judgment of the court, reversing himself."

Although numerous leading cases in which Palles took part—indeed he seems to have been party to almost every Irish decision known in England from 1874 to 1916—are mentioned, the author does not go into them in any detail. He tries to give us a picture of the whole man, but the difficulty is that matters like Irish education are not likely to interest many readers. It is right that the biography of this important judge should have been written and Mr. Delaney has done his job adequately, but somehow one feels from the excellent illustrations that Irish temperament must sometimes have disturbed the apparent even tenor of Palles' ways. One or two of the anecdotes, and they are new, show that Palles must have been very lively.

E. F. G.

We have also received:

Hanson's Death Duties. Fifth Cumulative Supplement to December 31, 1960. By Henry E. Smith, ll.b., assisted by R. H. Fletcher, ll.b., Barrister-at-Law. London: Sweet & Maxwell, Ltd. xii and 185 pp. (£1 5s.)

The Oyez Directory of Local Authorities. Solicitors' Law Stationery Society, Ltd. 62 pp. (10s. 6d.)—This directory is as devoid of literary pretentions as *Bradshaw*, but just as useful. There are the names and addresses of all the local authorities in England and Wales and a list of rural parishes with their rural districts. A good investment: it is obviously going to save conveyancers a lot of time and trouble.

Where to Look for Your Law. Thirteenth edition. By C. W. Ringrose, Librarian to the Hon. Society of Lincoln's Inn. Sweet & Maxwell, Ltd. 1960. 228 pp. (10s. 6d.; interleaved edition £1 1s.)—Most readers will be familiar with this useful book which first lists the subjects and indicates where to find the law, then lists the works by authors and then adds miscellaneous information on legal journals, law reports and even micro-card and micro-film productions. With respect, although the book is invaluable, it really needs thorough revision, particularly as there is no alternative. For example, why does *Goodeve* 1929 O.P. appear on p. 2, but *Goodeve* 1949 by Kersley O.P. appear on p. 104? Jackson's *Agricultural Holdings* is 1955 in one place and 1959 in another. Why do some O.P. works appear under authors but not others? Would many practitioners agree that *Brickdale* and *Potter* are the leading works on registered land as compared with *Curtis & Ruoff* and the little *Ruoff*? Even if the editor does not know the editors of the *Conveyancer* surely the publishers should! Is Graya so old that the date of its establishment is shrouded in the mists of antiquity? Incidentally, 10s. 6d. seems an awful lot for 228 pieces of blank paper.